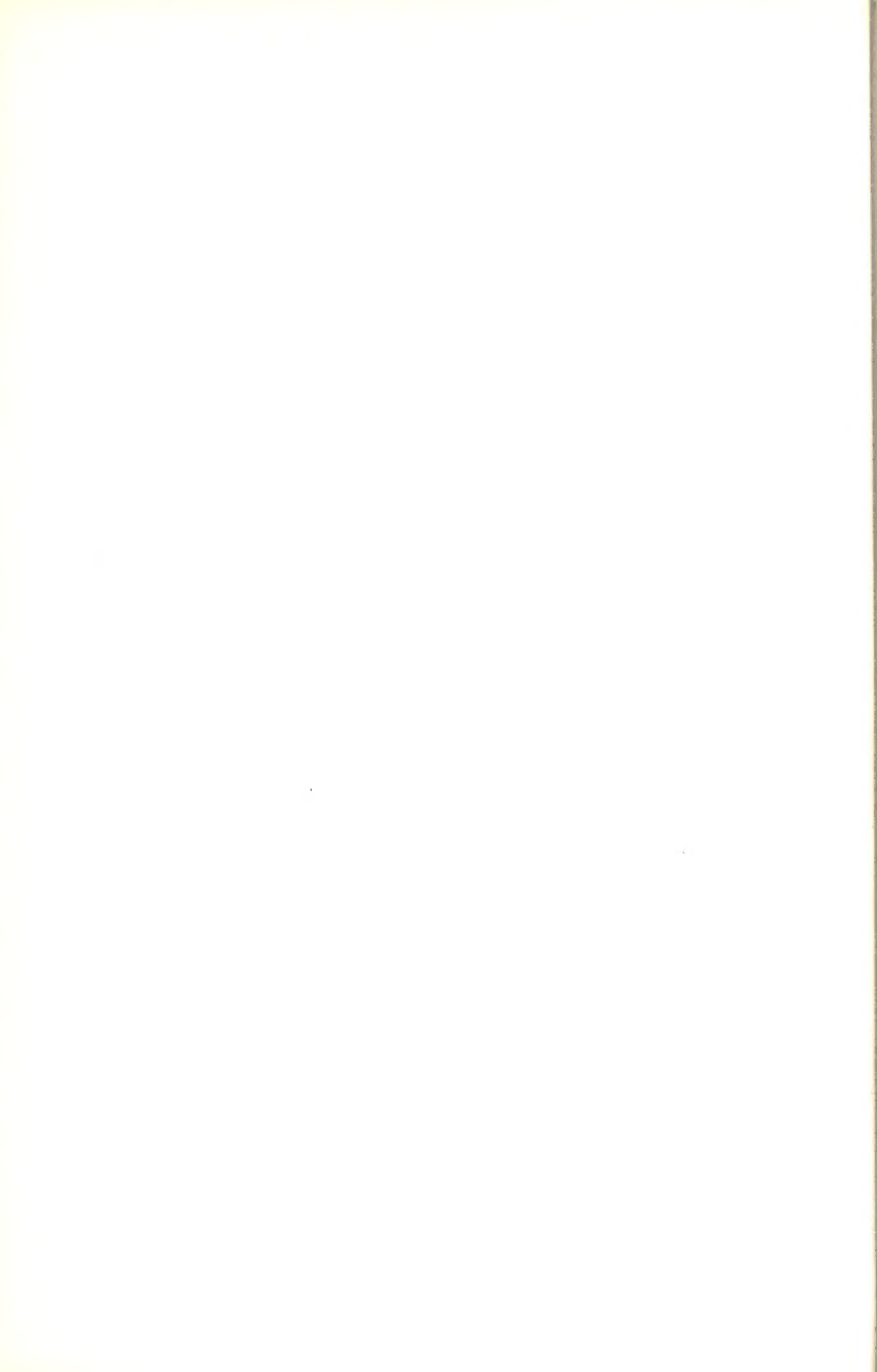


THE EAVESDROPPERS





The EAVESDROPPERS



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SAMUEL DASH

RICHARD F. SCHWARTZ ROBERT E. KNOWLTON

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To
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THE EAVESDROPPERS





INTRODUCTION

There is in America considerable public awareness of wiretapping, but most people are completely confused about it. Conflicting data about wiretapping have come to them through popular magazine articles and through the newspapers reporting on testimony at public hearings and trials. They have read, for instance, that wiretapping is rampant and wiretappers swarm all over the city, wildly tapping every phone within their reach. At the same time, they have read that the telephone company says wiretapping does not exist, and people are only imagining that phones are tapped.

We are given the impression at times that the police and district attorneys use wiretapping in all their investigations and have virtually placed a dragnet of wiretaps on every suspect's phone in the city. On the other hand, in states where police wiretapping is prohibited by law, police say they never use wiretapping. In states where police wiretapping is permitted by law, we read statements by the police that they hardly ever use it, and then only in the investigation of serious and major crimes, affecting life or the security of the country.

People are, naturally, disturbed by reports on the development of electronic devices that can spy on them no matter where they run to hide. They have read about a little electronic gadget which can be pointed at telephone booths to pick up both sides of telephone conversations, permitting the user of the device to listen in or record the conversations at his pleasure. There have been accounts of a super-

sonic ray which can be beamed at a wall or window to retrieve voice-sound vibrations resulting from conversations taking place within a building. They have also read that this is poppycock.

Public information on the legality of wiretapping is equally confused. People are not to be blamed if they do not understand the laws about wiretapping. There is no uniformity among states and there is conflict between the laws of several states and the federal law. Picture the dilemma of the New York City police officer. The New York Constitution and the statutes of New York authorize him to wiretap if he first obtains a warrant from a judge. This is all familiar to him. It is the same procedure he follows in search and seizure. Yet the Supreme Court of the United States, interpreting the Federal Communications Act which prohibits wiretapping, has told him that the supreme law of the land is the United States congressional prohibition against wiretapping, embodied in the Federal Communications Act, and that the New York constitutional and statutory authorization of police wiretapping is invalid.

In 1953, Pennsylvania police officers who knew that the Federal Communications Act prohibited wiretapping were told by the Supreme Court of Pennsylvania not to heed that Act, since Congress could not have intended to interfere with local police wiretapping for use in state prosecutions.

There is still another paradox. From what we have said of the Supreme Court's ruling outlawing all wiretapping in the United States, it would be fair, would it not, for the people to think that, in Massachusetts or New York, a defendant could not be convicted of a crime on the basis of wiretap evidence? But, in fact, wiretap evidence is legally admissible in these states, though the police may go to jail for doing the wiretapping itself.

In short, although people read all about wiretapping, they actually know little or nothing about it.

And what of the private wiretappers, or the wiretapping practices of big business, labor, and politics? The public has acquired a vague and uneasy feeling about this kind of activity from what it has read, but its knowledge goes little beyond suspecting that these practices exist. That public includes legislators who yearly debate or pass regulatory provisions concerning wiretapping. In 1957, alone, five states enacted wiretapping legislation.

The time has arrived, therefore, for a nationwide, fact-finding study of wiretapping practices, laws, devices, and techniques. In the summer of 1956, the Pennsylvania Bar Association Endowment undertook to sponsor such a study under a grant from the Fund for the Republic.

A committee to guide the policies of the study was appointed by the Endowment, consisting of three members: Robert T. McCracken, Esquire, Chairman, William Clarke Mason, Esquire, and Aaron S. Swartz, Jr., Esquire. Later, after Mr. Mason's death, Arthur Littleton, Esquire, joined the committee.

Money and time were tightly limited. For a study covering approximately ten states, we had a budget of \$40,000 and a period of one year. Later, \$10,000 and four months were granted to complete the study.

This was to be an objective, fact-finding study. No conclusions were to be reached or opinions offered in the report. As director of the study, I myself felt confident I could remain objective, despite my experience as a prosecutor who used and favored wiretapping in criminal investigation. Yet, to be doubly sure, and to guarantee that all viewpoints would be represented, I appointed as associate director Professor Robert E. Knowlton of the Rutgers University Law School.

Knowlton, who has been an opponent of wiretapping, also undertook to survey the law on the subject for the study.

The technical aspects of wiretapping or electrical eavesdropping could not be reviewed satisfactorily by lawyers. The technical expert had the vital task of exorcising the bugaboos and explaining the limitations of the electrical eavesdropping devices. He also conducted a fascinating experiment on editing tape, of which more will be said later. The expert appointed to do this work was Richard F. Schwartz of the Moore School of Electrical Engineering of the University of Pennsylvania.

The remainder of the staff was to be made up of research assistants and investigators; but their appointment had to wait until we had determined what it was we were looking for.

Although the initial discussions related to wiretapping, we were never satisfied that the study could be so limited. Immediately, any reviewer of wiretapping must direct himself to the question of individual privacy. And when he does, it becomes clear that several other techniques of surreptitious fact-finding present similar if not the same issues with regard to individual privacy, or the right of a man to be left alone. Could we overlook the old-fashioned eavesdropper who hides in a closet or dark doorway; the informer or police undercover agent, who, under the guise of a participant in crime, collects factual evidence against suspects; the use of a concealed microphone, commonly known as a "bug"; or the use of a high-powered telescope, a concealed and automatic camera, or closed-circuit television?

The failure of legislators to recognize the relationship among these eavesdropping techniques has led some states to enact strict prohibitions against one technique and completely overlook another. Thus, in Pennsylvania in 1957,

it was made illegal for anyone to intercept a telephone communication, even for a law-enforcement purpose. The legislature ignored the use of concealed microphones, with the result that it is legal in Pennsylvania to bug a bedroom, den, or office, but illegal to intercept a telephone communication.

This is not to say that laws must equally apply to all eavesdropping techniques. Rather, we concluded that people will be better able to formulate policies and opinions on the delicate question of individual privacy and the right of the state to investigate crime or the individual to collect facts, if they have before them a review of all eavesdropping techniques and not just one restricted to wiretapping.

The word "eavesdropping" has an unpleasant connotation, and in its true meaning encompasses not only the act of surreptitious fact-finding, but also the motive and purpose to slander or libel. As popularly thought of, the eavesdropper is a form of sneak who picks up information not intended for his eyes and ears. It is understandable that the law-enforcement officer, or the private detective, who is engaged in surreptitious fact-finding for what he considers to be a lawful purpose, will resent being called an eavesdropper.

Yet we are faced with the need to find an overall descriptive word that will eliminate the necessity of repeating the phrase "surreptitious fact-collecting affecting individual privacy" over and over. "Eavesdropping," therefore, has been employed in this book as the word most fit to describe the subject of the study. We are using it stripped of unpleasant connotations, and only in its most neutral form. For example, when we say that a police officer engages in eavesdropping, we do not mean to imply that he is doing anything wrong or reprehensible, but merely to state that he is engaged in an act of surreptitious fact-collecting affecting individual privacy. If, however, that particular act is wrong or reprehensible according to the concepts of the individual reader, then

the police officer will, for him, stand condemned on the facts, and not because of the word we use.

Because of the great variety of approaches taken by the various states to eavesdropping, this country provides an excellent laboratory for the purposes of comparison and evaluation. Not being able to cover all the states in a year's time, we chose jurisdictions representing all the available legal situations. In picking jurisdictions, we were especially interested in those states where legislative hearings had been held on the subject of eavesdropping. In the course of a year we had time to cover Massachusetts, New York, Pennsylvania, Illinois, Louisiana, Nevada, and California.

The differences among these states are interesting. Massachusetts, New York, Louisiana, and Nevada, all by their laws permit law-enforcement wiretapping. Massachusetts requires only the written consent of the district attorney or attorney general before a person may wiretap; New York requires a court order made on application by a police officer above the rank of sergeant; Nevada recently enacted a law similar to the New York law. Louisiana permits police wiretapping without any regulations or authorization whatsoever.

Pennsylvania, Illinois, and California, all have legislation prohibiting law-enforcement wiretapping. Pennsylvania's legislation is the most recent, enacted in 1957. Prior to the 1957 law there was no legislation in Pennsylvania, and the Supreme Court of Pennsylvania had ruled that police officers were entitled to wiretap despite the Federal Communications Act prohibiting wiretapping. California and Illinois are old veterans in the field of wiretap prohibition. Illinois enacted its general prohibition in 1927, but had, back in 1895, prohibited wiretapping among newspaper rivals. California has the oldest wiretapping prohibition in the world. It prohibited the interception of telegraph messages in 1862. Its telephone wiretapping prohibition dates from 1905.

Finally, there was the most troublesome question of all: How were we to get the facts we sought? In order to make a complete coverage of the country, questionnaires were sent to the major cities in each of the forty-eight states. The recipients of the questionnaires were top-ranking police officials, district attorneys, attorneys general, selected law professors, selected defense counsel, public and voluntary defenders, and civil liberties organizations. We received replies from every state, although not from every recipient. The replies to our questionnaires soon illustrated that questionnaires are utterly useless in a fact-finding study of this kind.

In every state where police wiretapping was prohibited, all police officials stated in the questionnaires that they never wiretapped, and in all states where police wiretapping was permitted, police officials stated either that they never used wiretapping, or that they used it infrequently. All police officials in both types of states stated in the questionnaires that they had never heard of any complaints about wiretapping or any abuses involving wiretapping.

Almost all the law professors, defense attorneys, public defenders, and civil liberties organizations pleaded ignorance of the subject. Some were willing to make broad statements, such as "police do plenty of wiretapping here," but went on to explain that they only believed this was so from what they had heard but had no actual knowledge of the fact.

We knew from the beginning that we would have to dig these facts out ourselves by a fresh investigation. The fact-finding involved two major areas: eavesdropping by law-enforcement officers and eavesdropping by private parties. In the former category we had originally intended to include federal law-enforcement officers. However, the limitations on our budget and time made this impossible. We had enough to do in one year to cover the activities of the county

and state law-enforcement officers in the jurisdictions throughout the country which we selected. Thus, this study has made no effort to collect or present facts concerning federal law-enforcement eavesdropping practices. A study limiting itself to the federal practices would be well worth making at a future time.

In the category of private eavesdropping, we have included not only the activities of the private detective, principally in domestic relations squabbles, but the vast area of private eavesdropping relating to business, labor, and political conflict.

A third category developed later on in the study. This had to do with the racket use of eavesdropping techniques and devices, mainly for defense purposes.

Having failed to get anything worthwhile from our questionnaires, we determined to collect the facts on eavesdropping that had already been gathered by other fact-finders. These were to be found in newspaper stories, magazine articles (especially stories written by eavesdroppers on their own experience), and the testimony at legislative hearings, both state and federal.

The New York Times is the only newspaper that publishes an index. We went through that index and read every story on wiretapping or electronic eavesdropping published in *The New York Times* from 1874 to the present day. Some newspapers in the states selected for our study maintained their own indexes on filing cards, which were not published. These, also, were reviewed, and the news stories to which they referred us were read.

Indexes to periodicals were next examined, and we learned that between 1930 and 1955 no less than seventy-eight magazine articles had been published on the subject of wiretapping or the use of concealed microphones. We read all these articles.

From 1918 to 1955 there were a number of federal congressional hearings on wiretapping. Actually, only the hearings from 1940 to 1955 produced factual testimony. We obtained copies of the testimony adduced at these hearings and collected vital background information to be used later, during interrogations of eavesdroppers. In the past few years a number of state legislatures also conducted hearings on wiretapping or bugging, but none of these legislative bodies published transcripts of the testimony. Two states, New York and California, published the reports of the legislative committees conducting the hearings. However, in three states, New York, New Jersey, and California, the legislative committees extended to us the courtesy of permitting us to read the typewritten copies of testimony received at their hearings. We are indeed indebted to these legislative committees for their cooperation. They are the Savarese Joint Legislative Committee to Study Illegal Interception of Telephone Communications in New York; the Forbes Senate Investigating Committee on Wiretapping in New Jersey, and the Regan Senate Investigating Committee on Interception of Communications in California.

Other states held legislative inquiries on electronic eavesdropping in the past few years, such as Massachusetts, Pennsylvania, Maryland, Minnesota, Nevada, and Oregon. However, none of these states conducted fact-producing hearings, or reduced whatever information they received to a permanent record.

Having raked up the leaves of eavesdropping material that had fallen through the years, we were now ready to do some tree-shaking ourselves. We had not, of course, obtained the whole story by our reading. Most of the writing in this field refers to practices in New York City. Almost nothing had been written on the eavesdropping practices of the other jurisdictions we had chosen to study. Besides, although this

vast body of written material was extremely helpful to us, we were obligated to re-examine these facts, since in the beginning, we had no way to vouch for their validity.

How, then, were we actually to learn at first hand if, for instance, the police in Chicago were wiretapping; or, how effective eavesdropping practices by the police and other law-enforcement agencies in Boston have been; or, who were the principal private wiretappers, and how did they work? How else but by a face-to-face interrogation of representative law-enforcement and private eavesdroppers?

Another method of fact-finding was considered, but had to be discarded. This was the method of direct observation. The American Bar Foundation Study of the Administration of Criminal Justice of the United States has chosen this method of investigation. According to their "Plan of Survey," published in 1955, they propose to place trained observers in police stations, district attorney's offices, and courts, for extended periods of time, for the purpose of watching the living practice as it unfolds before them. Case history studies and the interrogation of participants were disapproved on the grounds that these methods were too narrow and subject to the danger of the participants relating their practices in terms of official policy, rather than as they actually exist.

One wonders whether the trained American Bar Foundation observer sitting in a police patrol car, for no matter how long a time, will ever learn how the police occupants of that car actually behave. For instance, if police corruption is a relevant issue in the Foundation's study, will any of the patrolmen in that car ever take a penny of graft money while the observer is there to see? In any event, we could not use the method of direct observation. Eavesdropping, by its very nature, has no place for an outside observer. This is especially true when eavesdropping is done in violation of law.

And so it was decided we would go out and talk to the eavesdroppers. But we would have to go with hat in hand, since we had no power to compel answers. This was true in every jurisdiction except Philadelphia.

In Philadelphia, we were able to gain for a short time the benefits of the district attorney's subpoena power in our investigation of private detective eavesdropping. Pennsylvania, alone among the states, grants the district attorneys of the various counties direct supervision over private detectives. The act of 1953 gives to the district attorney subpoena power to require the appearance of a private detective with his books and papers in the district attorney's office and the additional power of placing a private detective or any person with the knowledge of private detective business under oath for the purpose of inquiring into the manner in which the private detective conducts his business. We requested the district attorney to begin an investigation of private detective eavesdropping under the power of the act of 1953 and to let us cooperate on behalf of the study, as observers. The district attorney agreed to do this.

In the meantime, we had also obtained the cooperation of the attorney general of Pennsylvania and the police commissioner of Philadelphia. The attorney general had been recently appointed, and prior to that had been the foremost defense attorney in Philadelphia. His cooperation was to be expected.

The police commissioner recognized that our investigation, even unaided by him, could well turn up illegal police activity. We agreed that in return for his cooperation, we would turn over all matters involving illegal police activity to him for department disciplinary action and that the police department would get the credit for uncovering police abuses. The attorney general had assigned a special investi-

gator to work with the study. The police commissioner now assigned a deputy police inspector to work as a liaison officer between the police department and the study.

The district attorney subpoenaed all the private detectives and put them under interrogation. However, despite the fact that the private detectives were under oath, none of them seemed to be concerned about the investigation, and all of them denied eavesdropping activities. It was only when, again through the aid of the district attorney's subpoena power, we got to the files of the private detectives, that the true story of private wiretapping in Philadelphia unfolded.

In the other jurisdictions, our position was entirely different. We were outsiders and volunteers and had to find a means of obtaining the true facts in the face of official reluctance to part with them. Obviously, some relationship had to be established between police chiefs and district attorneys and our study. In the summer of 1956, at the annual meeting of the National Association of County and Prosecuting Attorneys in Miami, Florida, we called upon the members of the Association to cooperate with the study. Cooperation was promised, and we were offered a friendly reception by the district attorney in any city we sought to study. As it turned out, this was a genuine offer. For the most part, the district attorneys were friendly and helpful to the study; but even more important, they were candid.

Our next hurdle was the police chiefs. At the meeting of the International Association of Chiefs of Police in Chicago in October, 1956, a resolution was introduced calling for cooperation with the study. It was unanimously adopted. The way now seemed clear, but it was not to be. It quickly became apparent to the police chiefs (as it should have been from the beginning) that the study was to be objective and was not created to support the law-enforcement position on wiretapping. Some police chiefs began to believe that the study

was antagonistic to law-enforcement, and that our purpose was to discredit wiretapping.

As originally planned, the program for obtaining facts in "hostile" jurisdictions called for the use of undercover investigators. These would have to be men who lived in the area under investigation and who had been wiretappers or eavesdroppers themselves or were former FBI agents or ranking police officers with direct knowledge of wiretapping procedures, or had contacts with police officers who had such knowledge.

The shortness of our time, and the almost total unavailability of the kind of investigator we needed made the job of finding investigators extraordinarily difficult. For our pilot experiment in this kind of investigation, we chose Chicago and New York.

In Chicago, where wiretapping, including law-enforcement wiretapping, was outlawed, we quickly learned we were unwelcome. I counted on certain law-enforcement contacts, including the Chicago Crime Commission, to recruit an investigator for the study. No one could suggest a candidate.

Finally, a law school professor came up with the name of a man who appeared to be the answer to our needs. He had been an investigator in the Chicago area since 1913, doing much of his work for the federal government. He had also been a private wiretapper and manufacturer of wiretap devices. However, after working a few weeks, he submitted a report indicating he was unable to obtain the information we sought. In view of his background, this was nonsense.

It was clear he had been persuaded not to carry out his assignment or had been frightened away. There was one clue in his report. Although he professed no knowledge of the information we sought, there were two questions which he answered fully. One of these questions concerned illegal activity on the part of telephone company employees in aid-

ing wiretappers and the role the telephone company played in preventing such action. Our investigator set forth at length the official telephone company rules, asserting with vigor that unlawful activity by telephone company employees is highly unlikely, but that if it does occur, the telephone company strikes with a heavy hand.

The other question answered completely by the investigator was one requesting the name of someone connected with the telephone company in Chicago who could be contacted for further interviewing. The investigator's typewritten answer gave the name of a special agent in the Chicago Telephone Company, his business address, office telephone number, home address, and home telephone number.

We found it impossible to get another investigator, and decided to let Chicago rest a while. Later we returned and uncovered the Chicago eavesdropping story, but without the aid of an undercover investigator.

Our luck was not much better in the initial phase of the New York investigation. Our first investigator, who had had experience with a federal investigating agency and who had been a wiretapper himself, provided us with lengthy reports on interesting wiretapping cases in New York. These stories were presented as fresh material relating to activities currently taking place in New York. It was here that the reading we did at the beginning of the study repaid our efforts. For we hadn't been checking the reports of our investigator long when we came across familiar references and incidents. We then compared the reports with the material we had collected from our reading of newspapers, magazines, and testimony, and to our consternation learned that our investigator was doing his work in the library and not on the street.

At the same time, constant inquiries we were making in other jurisdictions in order to locate investigators were un-

productive. It appeared either that nobody wanted to do this kind of investigating work, or that some people wanted nobody to do it. In all fairness, however, it should be said here that investigators John Collins who later joined the study in New York, and Joseph Wyman and Harry Smith in Philadelphia, gave exceptionally able service to the study.

It was now March of 1957, and there were only six months remaining of the time allotted for the study. Perhaps we were going about it incorrectly. Could it be that another method of fact-finding existed that we had overlooked? We decided to invite a number of persons who were nationally prominent in the field of law, legal education, and law enforcement to meet with us in New York to discuss the question of fact-finding methods. These persons were assured that they were merely to meet with us in an advisory capacity and that they undertook none of the responsibility of the report we ultimately would publish.

Those accepting the invitation to serve on the committee were Judge Learned Hand; Harrison Tweed; Thomas D. McBride, Attorney General of Pennsylvania; Jefferson Fordham, Dean of the University of Pennsylvania Law School; James Bennett, Director of the Federal Bureau of Prisons; District Attorney Frank E. Moss, President of the National Association of County and Prosecuting Attorneys; Chief George Otlewis, President of the International Association of Chiefs of Police; and William Parker, Chief of Police of Los Angeles. Judge Hand, Mr. Tweed, District Attorney Moss, Chief Otlewis, and Chief Parker were able to attend the meeting in New York.

The meeting was helpful. We learned that nobody had any clear answer to the problem, and, therefore, any reasonable approach we took would probably be as good as any other. Further, we were given some guidance as to what would be considered out of bounds.

It now seemed clear that in order to make good use of the friendly relations we had established with the district attorneys and of my own experience as a former prosecutor, I would have to go out into the states we had chosen and conduct the investigation personally.

My itinerary included Boston, New York City, Philadelphia, Chicago, New Orleans, Baton Rouge, Las Vegas, Sacramento, San Francisco, and Los Angeles. I planned to hunt down the principal eavesdroppers, both private and law-enforcement, and learn their story directly from them. In view of a caution we received at the New York meeting of advisors, it was my intention in the investigation of law-enforcement activity, to speak only to high-ranking police officials who had control over policy decisions.

In the course of my tour, I interviewed approximately three hundred people. Among them were newspaper editors, private detectives, police chiefs, district attorneys, attorneys general, convicted racketeers (reformed and otherwise), wire-tap specialists, wiretapping equipment manufacturers, lawyers, judges, crime commission directors, cab drivers, persons convicted of wiretapping, and many more—all experts, each in his own way.

Keeping in mind another suggestion we received at the meeting with our advisors on method in New York, I was careful to inform each person who supplied information that I was making a study for the Pennsylvania Bar Association Endowment the results of which would be published in a written report. However, I also promised each informant that if he so desired, I would conceal the source of my information in my discussion of the factual material I was collecting, and would not divulge his name in the report or to any inquiring person.

In this manner, facts were collected in the states I had time to visit. No fact was accepted if it came from one in-

formant alone, unless the informant was the district attorney or the head of the police department, who could speak authoritatively on the policies of his office. Often facts learned in one part of the country corroborated what we had learned in another part of the country. As the study progressed, we found we were getting constant corroboration of our factual information.

Because of our promise to conceal the source of information where concealment was requested, the factual report necessarily omits naming many names and places, and often disguises a factual situation so as to prevent an identification with the original occurrence, but preserves all the while the basic truth of the occurrence and its relevance to the study.

Much material collected by the study could not be reported in any way without breaking faith with the source of information and so has been omitted. The facts and events not reported, however, do not present a different pattern or reveal different practices from those described in the interviews reported here.

The subject matter of this book is dealt with in three parts: the practice, the tools, and the law. The part dealing with the practice represents the results of the factual investigation in seven jurisdictions conducted by the director of the study, and is written by him. Actually, the director visited ten jurisdictions, but in three, New Jersey, Maryland, and Washington, D. C., the material collected was too sketchy to include in the report.

The part dealing with the tools of eavesdropping was prepared and written by Richard F. Schwartz. It represents a fresh look at electrical eavesdropping from a technical point of view. It has been suggested by some who have read the manuscript that a better understanding of the entire report is obtained if the technical section is read first. For the purpose of commanding immediate interest, we chose

to begin the report with the story of eavesdropping practices. But nothing prevents the reader from jumping ahead to the technical, or, for that matter, to the legal section. Each section is self-contained.

The law of eavesdropping is presented in Part Three. This part was prepared and written by Robert E. Knowlton. It provides an analysis and survey of federal and state law on our subject, bringing the review up to the most recent decision of the Supreme Court of the United States.

Because this report depended on so many persons who must remain anonymous, we will omit the usual credits. Those who aided us know who they are, and we sincerely thank them all. However, we would be remiss if we didn't express special appreciation to the members of our committee, Robert T. McCracken, Arthur Littleton, and Aaron S. Swartz, Jr., who courteously, skilfully, and generously guided us in this study, which by its very nature found itself so often in troubled waters.

On November 19, 1957, we were all stunned and dismayed by the passing of William Clarke Mason. The entire American bar experienced a keen sense of loss. This study was directly affected. For Mr. Mason had from the beginning encouraged the Pennsylvania Bar Association Endowment to undertake the study and had served on the committee which guided its path. As with all his efforts in the service of his fellowmen, Mr. Mason provided inspiration and fresh imagination for our work. He lived long enough to see the completion of our factual investigation and had been looking forward to reading the final report. He died as the report was being written. If we have achieved the goal we originally set for ourselves, it is largely due to William Clarke Mason being at our side.

SAMUEL DASH
Director

Philadelphia, Pennsylvania

Part One



EAVESDROPPING:
THE PRACTICE

1

THE ROOTS

Electrical eavesdropping goes back at least one hundred years. Shortly after the telegraph came into existence and wires were strung from pole to pole, wiretappers were busy intercepting the coded communications. As early as 1862, California found it necessary to enact legislation prohibiting the interception of telegraph messages.¹ One of the first wiretappers prosecuted under this act was a former stockbroker who was arrested in 1864 for masterminding a conspiracy to intercept news of stock operations coming from the East and to sell this information to certain subscribers.²

During the Civil War, the telegraph quickly became a vital means of communication for the military forces on both sides of the conflict. The advantages of intercepting military telegraphic communications were not long overlooked. General Jeb Stuart actually had his own personal wiretapper travel along with him in the field.³

After the Civil War, a number of former telegraph operators engaged in wiretapping for private gain. A correspondent for a Boston evening newspaper who had been an expert Civil War telegrapher was exposed as a wiretapper. It was reported that he would often save himself the trouble of news-gathering by listening to the dispatches of other correspondents as they were sent over the wires. In 1874, a resolution was passed in the Massachusetts General Assembly

directing the architect of the Capitol Building in Boston to cause the telegraph instruments located in the corridor of the south wing of the Capitol to be so isolated that it would be impossible for any unauthorized person to hear and obtain messages.

Federal congressional investigators at this period apparently were not loath to seize telegraphic messages. In 1876, a congressional committee investigating Washington real estate dealings pounced upon three quarters of a ton of telegraph messages collected in one of the offices of the Atlantic and Pacific Tea Company. *The New York Times* of June 24, 1876, reporting the seizure, commented:

These messages relate to the private business affairs of a great many people. . . . Here is the telegraphic correspondence of unaccused and unoffending citizens hauled about and thumbed by a knot of gossips. These persons, Democratic congressmen and clerks, when they have read, arranged, digested, and indexed these messages, may turn out to be blackmailers or the accessories of blackmailers. The whole proceeding is an outrage upon the liberties of the citizen which no plea of public necessity can justify.

As early as 1893, "past posters" were busy at work. They employed former linemen and operators for the Western Union Company to flash race news to gang members, so that bets could be placed with bookies before official race results had arrived.

By 1894, some indication that New York police officers were intercepting telegraphic communications had reached the public. This was vehemently denied by the Western Union Company. "The story is so absurd," a Western Union manager said, "it makes us laugh. Why, such an arrangement would make us liable to arrest. We have no authority to subject the messages of our patrons to the eyes or ears of anyone else. Any business carried on between us and the

police will, as heretofore, be carried on by our usual system, by which we serve the public." ⁴

Later, in 1916, the telephone company admitted that the police had been wiretapping with the company's cooperation, the understanding being that this was not in violation of any law.⁵

The beginnings of telephone wiretapping occurred in the early and middle 1890's. Alexander Graham Bell first exhibited the telephone at the Centennial Exposition in Philadelphia in 1876. In 1878, the first switchboard for commercial service was put into operation in New Haven, Connecticut, with 21 subscribers. In 1885, there were 155,800 telephones in the country, representing 0.27 telephones per 100 population. In 1895, when telephone wiretapping was in its early infancy, there were 339,500 telephones in the country, representing 0.48 telephones per 100 population.

New York police were actively using wiretapping in criminal investigations in 1895. A loose arrangement existed between the New York police and the telephone company whereby the telephone company cooperated with the wiretapping practices of the police department.⁶ Equally active wiretapping practices existed at the same time among newspaper rivals. Telephone calls by reporters of one newspaper were being intercepted by reporters of a rival newspaper for the purpose of picking up "scoops." This practice existed across the country. It was reported in Boston, New York, Chicago, and San Francisco. In 1895, Illinois enacted legislation prohibiting wiretapping for the purpose of intercepting news dispatches. In 1899, the *San Francisco Call* charged that the *San Francisco Examiner* engaged in wiretapping activities for the purpose of stealing the *Call's* exclusive stories.⁷ It was this charge by the *San Francisco Call* that led to the California statute of 1905 extending the 1862 prohibition against telegraph wiretapping to telephone com-

munications. During the first decade of the twentieth century, newspapers throughout the country periodically reported incidents of telephone wiretapping. Most of these reports dealt with the wiretapping activities of gamblers and individuals intercepting stock news. There were few, if any, reports of law-enforcement wiretapping, although, as was later admitted by the police, there was no letup by law-enforcement officers on wiretapping during this period.

New York was treated to a sensational wiretapping scandal in 1916. It was revealed that the mayor of New York had authorized New York police to tap the telephone conversations of five Catholic priests to obtain evidence for a special New York commission investigating charity frauds.⁸ A New York legislative inquiry was started as a result of the disclosure.

The legislative committee learned that the New York police had the means of listening in on any wire in the entire system of the New York telephone company, and that wiretapping had been engaged in by the police with the cooperation of the telephone company since 1895. Police testified that they listened in on many conversations, including confidential conversations of lawyers and physicians. The detective sergeant in charge of the wiretapping squad told the legislative committee that the police only tapped a lawyer's phone to find out the whereabouts of a client. He was asked, "If you heard a client make a confidential statement to his lawyers, you wouldn't tell your superiors about it, would you?"

He replied, "I would not."⁹

Charges were even made by those who were tapped that their conversations had been altered. It was argued that any person who would tap a wire to make his case would not

hesitate to garble and distort sentences, reading into them the meaning he desired.

The charges against the priests were dismissed by the Grand Jury. Later the police officers who had done the wiretapping were prosecuted, but exonerated when the court found nothing illegal about police wiretapping.

At the same time, it was learned that a detective agency had been engaged to tap the telephones of a prominent law firm for the purpose of obtaining information regarding an alleged shipment by German agents of munitions to Mexican bandits, although they were ostensibly purchased for the Allies. The police were also tapping the wires of this firm for the same purpose.

During this period, as today, police claimed that wiretapping was necessary. The New York mayor told the 1916 legislative committee that, "Conviction on conviction has been obtained which otherwise would have been impossible. The Baff murderers as well as dozens of other criminals would still be at large, had the police not used this means." ¹⁰

Commenting on the controversy, *The New York Times*, in an editorial, said: "The Times feels too few wires have been tapped not too many, and that the exposé has hurt the cause of justice." ¹¹

The 1916 New York legislative committee also heard charges that the police had tapped the wires leading to the headquarters of several unions in New York City, and that the information obtained by this means had been turned over to employers. The police admitted tapping union lines, but claimed that the purpose of the wiretapping was the apprehension of gunmen hired for strike purposes.

Evidence of police wiretapping for private purposes was revealed in New York in 1917. A police captain was charged with having unlawfully tapped the wires of a hotel in Man-

hattan to obtain divorce evidence for a private detective. He was fined five days' pay by the police commissioner.

During the war years, especially in 1917 and 1918, there was a great fear of wiretapping in Washington, as well as in the major eastern cities. The United States Senate passed a resolution calling upon the Department of Justice to furnish information concerning what measures were being taken to combat wiretapping by German spies. In New York, a law was passed in 1918 prohibiting wiretapping by law-enforcement officers except on court authorization. This measure, however, was vetoed by the governor. There was speculation that the action of the governor was based on the fear that such a law might hinder the secret service of the United States.

In the prohibition period, wiretapping was the principal method used by prohibition enforcement officers to catch offenders. It was prohibition wiretapping that produced the famous Olmstead case in 1928, in which the majority of the Supreme Court of the United States ruled that federal wiretapping without a warrant does not violate the search and seizure clause of the federal constitution. More frequently quoted is the dissenting opinion in the Olmstead case, in which Mr. Justice Holmes called wiretapping "dirty business."

A year later, in 1929, Mayor Walker of New York discovered that the seventeen telephone lines serving his office in City Hall and the direct wire between the mayor's office and the police headquarters had been wiretapped.¹²

The period between 1930 and 1940 was filled with wiretapping activity and state and federal legislative inquiries on this subject. In 1932, in Toledo, Ohio, an extensive wiretap layout was found in a room adjoining a suite which served as headquarters for the Farmers' Producers Association in a Toledo hotel. The producers' discussions concern-

ing an increase in milk prices had been bugged and tapped for several days.

In 1934, Congress enacted the Federal Communications Act, prohibiting the tapping and divulgence of telephonic communications.¹³ In 1938, the New York Constitution was amended to permit law-enforcement wiretapping in New York under the authorization of a court order.¹⁴

Sometime in 1935 or 1936, an FCC raiding squad, acting on a tip, uncovered wiretapping apparatus in a building located near the United States Supreme Court in Washington, D. C.¹⁵ The apparatus was connected to the telephone lines of justices of the Supreme Court.¹⁶ Although the wiretapper had been scared off and was never found, the FCC investigators had sufficient evidence to believe that the installation had been paid for by a major private business concern having an interest in matters pending before the Court.¹⁷ It appears that the matter was kept hidden from the members of the Supreme Court.

A parallel incident, and one which may be related to the Supreme Court tap, was reported in 1948 before the New York County Criminal Courts Bar Committee inquiring into wiretapping.¹⁸ William G. H. Finch, president of Finch Telecommunications in New York, stated that a watchman had tapped the White House lines in Washington, D. C., in 1934 and 1935 solely for "entertainment and recreation." At that time Finch was in charge of the telephone division of the Federal Communications Commission. He had received complaints from Congress and the White House about wiretapping. Taps were then traced to a building temporarily used by the telephone company in Washington where the watchman was on duty.

A federal congressional committee in 1940 sought to establish that Robert C. LaBorde and John G. Broady, New York wiretappers, had tapped the phones of the justices of

the Supreme Court of the United States during the time of the Court's deliberation in *Ashwander v. Tennessee Valley Authority* in the mid-1930's.¹⁹ However, this investigation got nowhere.

The 1940 congressional committee learned that in 1938, the Ruth Committee of the Pennsylvania legislature, which was investigating the judiciary of Philadelphia, tapped the telephones of Philadelphia's mayor, S. Davis Wilson.²⁰ In the same year (it was later charged before this same congressional committee), the wiretapping attorney John G. Broady had the telephones and office of a New York attorney tapped and bugged. This attorney represented several of the plaintiffs in a \$42,000,000 lawsuit against a major utility company. Broady was alleged to have been hired by the utility company to intercept the attorney's communications. Also in 1938, a New York private detective came to Philadelphia and bugged the conversations in a downtown hotel room of a number of leading Philadelphia political figures, in an effort to aid the Republican party in the gubernatorial election then pending.²¹

Wiretapping in this country reached a high point in the 1940's. There had been little or no enforcement of laws prohibiting or restricting wiretapping, and wiretapping techniques had been perfected. This was especially true in the latter part of the 1940's, toward and at the end of the second World War. During the war wiretapping was used extensively by military intelligence and secret service personnel in combat areas abroad, as well as by the FBI and secret service in this country. Many young men in the armed services were trained by the government as expert wiretappers for wartime assignments. Many of the present-day wiretappers, private as well as law-enforcement, received their training as members of the United States Armed Forces, and

after the war found that they had acquired a paying, and sometimes lucrative, trade.

It was revealed in 1940 that Governor Vanderbilt of Rhode Island had hired a New York private wiretapper to tap the telephones of the attorney general of Rhode Island and the mayor of Pawtucket.²² This scheme, which Governor Vanderbilt claimed was aimed at exposing election frauds, failed in its infancy. But the New York wiretapper had already been paid a fee of \$10,600 for his services.

The 1940 congressional investigation produced sensational testimony concerning wiretapping of the telephones of prominent persons and corporations, such as J. P. Morgan, the Guaranty Trust Company, John W. Davis, and the Soviet Amtorg Trading Company. In addition, it was learned that there had been considerable wiretapping of public officers either by other public officials or by private parties. Counsel for the congressional committee stated, "Innumerable circumstances have been discovered where telephone wires of public officials and private individuals have been tapped . . . at the instance of men holding high public office for no discernible reason other than that of purely personal gain."

The wiretapper LaBorde admitted placing wiretaps on the phones of Amtorg, but said he acted for a private detective who was working for the Dies Committee. The Dies Committee denied this assignment.

Efforts were being made in Congress in 1940 to enact a law which would permit federal authorities to wiretap in felony cases. President Roosevelt opposed this bill on the ground that it was too broad. Roosevelt advised that federal wiretapping should be limited to kidnapping and extortion cases and investigations of espionage or sabotage. Efforts to enact federal legislation to permit some federal

law-enforcement wiretapping were made all through the 1940's. But none of these efforts was successful. Even during the war years, the government was unable to get passed a statute authorizing law-enforcement wiretapping. Roosevelt told the FBI to tap wires anyway, in national security cases.

In 1942, New York enacted a law implementing the 1938 constitutional amendment authorizing law-enforcement wiretapping under court order.²³ Governor Lehman signed the bill with some hesitancy, declaring that the statute lacked a provision making wiretap evidence obtained without a court order inadmissible in court. He recommended that such a provision be added to the law in the next legislative session. Up to 1957, persistent efforts were made by succeeding legislatures to amend the New York wiretapping law in accordance with Governor Lehman's recommendations. None of these efforts succeeded.

Wiretapping in the nation's capital was suspected everywhere during this period. Not until 1951 did a Senate committee learn of the extensive wiretapping practices of a Washington police lieutenant, Joseph W. Shimon, throughout the 1940's.²⁴ One of Shimon's most ambitious wiretapping undertakings occurred in 1945. The Senate committee learned that Shimon had placed a number of taps on the telephones of a United States Senator and the representatives of a major airline at the time when efforts were being made in Washington to arrange a merger of Pan American Airlines and Trans World Airlines.

In 1945, Fiorello H. La Guardia, then director of UNRRA, brought John Broady of New York to Washington to tap the telephones of certain UNRRA employees suspected of dishonesty.²⁵ Broady called in Robert and Al LaBorde to do the technical work. The wiretap plant was located in a warehouse in Washington, D. C., where lines

were drawn from telephone connections going to the Hotel Annapolis, where the employees were staying. When Herbert H. Lehman took over as director of UNRRA, this surveillance was discontinued. No action was ever taken against the employees.

Five years later, Broady and a former ace police wire-tapper, Kenneth Ryan, were arrested on charges of wire-tapping telephones in New York City Hall.²⁶ It was alleged that the principal target of their wiretapping was Mayor William F. O'Dwyer. Broady had been hired by the millionaire dabbler in politics, Clendenin Ryan, to make these wiretap installations, for the purpose of obtaining evidence which would support Clendenin Ryan's charges that the City Hall administration was corrupt.

The prosecution against Broady failed when the state was unable to prove that the wiretap installation had been completed. The wiretap apparatus had been discovered, but the actual connection, apparently, had not been made. Frustrated by this failure, Mayor O'Dwyer suggested legislation making the possession of wiretap equipment with the intent to use it for interception of telephone communication a crime, even though the actual tapping had not been completed. The legislature passed such a law in 1949.

In 1948, the New York County Criminal Courts Bar Association conducted an inquiry into wiretapping in New York. The Bar Committee was told by a former secretary to Mayor Jimmy Walker that when municipal investigations are in progress, "Everybody is wiretapped." It was also learned at this period that New York police used wire-tapping principally to make gambling arrests. They did not hesitate to employ this means of investigation for very minor offenses. The most notorious case reported at this time was the police wiretapping of Mrs. Choremi, who was charged

with prostitution and loitering.²⁷ The only evidence against Mrs. Choremi consisted of wiretap transcriptions.

During all this time, thousands of wiretaps were being placed by law-enforcement authorities as weapons against crime. These taps were unaccompanied by the publicity afforded the sensational wiretap exposés. According to law-enforcement records and statements, wiretapping during the first half of the twentieth century produced remarkable results in the prevention of crime and the apprehending of major criminals. Police claimed that the benefits of "legitimate" law-enforcement wiretapping, which has received little publicity, outweighed the harm caused by wiretapping abuses.

Thus were ushered in the 1950's, which for the purpose of this report, constitute the "present-day" period. One hundred years of electrical eavesdropping had prepared the stage.

2

PERMISSIVE JURISDICTIONS

NEW YORK

Since 1892, and perhaps a few years earlier, New York police have been tapping telephone lines.

Although in 1892 telephone tapping was made a felony in New York, law-enforcement agencies never believed that this statute applied to them. New York police wiretapped through the early 1900's, through the first World War, and through the prohibition era. Finally, concern over wiretapping manifested itself in the debates of the constitutional convention held in New York in 1938.

A movement in the convention to control law-enforcement wiretapping was considerably limited in its effects, principally because of the forceful presentation made by law-enforcement representatives, especially by Thomas E. Dewey, then the district attorney of New York.¹ The result was an amendment to the search and seizure clause of the New York Constitution reading as follows:

The right of the people to be secure against unreasonable interception of telephone and telegraph communications shall not be violated and ex parte orders or warrants shall issue only upon oath or affirmation that there is reasonable grounds to believe that evidence of crime may be thus obtained, and identifying the particular means of communication and par-

ticularly describing the person or persons whose communications are to be intercepted and the purposes thereof.²

Thus began the court order system of wiretapping. In 1942, the New York legislature enacted enabling legislation which specifically detailed the manner in which law-enforcement agencies could obtain an order of the court authorizing the tapping of telephones.³ For fifteen years, New York law-enforcement officers wiretapped under this law without interference from the legislature. In 1957 and 1958, after a two-year investigation by a joint legislative committee into private and law-enforcement wiretapping, the legislature enacted several provisions governing electronic eavesdropping with which we will deal later. This fifteen-year experience provides an unusual opportunity to review the New York type of wiretapping law in operation. The discussion of law-enforcement activities which follows relates only to the practices existing prior to the 1957 and 1958 legislation.

From 1892 until 1938, during which time the police wiretapped regularly in the face of what appeared to be an outright prohibition by the New York legislature, there seemed to be little public concern over this practice and an absence of hostility on the part of the legislature and the courts. This was so despite the periodic scandals involving police wiretapping which appeared in the New York newspapers. For example, no legislative restrictions followed the revelation in 1916⁴ that the New York Police Department had tapped the telephones of a number of Catholic priests in the city of New York. New York police also escaped the restrictive legislation imposed on police in other states throughout the country during the prohibition period, when law-enforcement wiretapping was a constant practice and deeply resented by those who opposed prohibition itself.

The success of law-enforcement agencies in New York

throughout these years in retaining the right to wiretap is due almost solely to police advocacy. Organized associations of police and district attorneys have constantly presented their case to the governor and to the legislature, claiming without hesitation that wiretapping has been their most effective weapon against organized crime. In the past, and recently before legislative bodies, police and district attorneys have insisted that wiretapping was essential to enforce the criminal laws and that without wiretapping the law-enforcement agencies might just as well go out of business.

A review of the cases in which convictions were obtained through the use of wiretapping in New York reveals almost incredible conversations carried on over the telephone by persons engaged in criminal activity. It appears to be untrue, though it is widely believed, that criminals who are aware of police wiretapping stop using the telephone. New York police wiretapping transcripts prove that sophisticated criminals, like all other human beings, "talk" on the telephone.⁵ Publication of police wiretapping practices, therefore, has not seriously interfered with the effectiveness of wiretapping as a police weapon.

The claim that wiretapping has been an effective law-enforcement weapon was demonstrated by District Attorney Frank Hogan of New York, when he testified before the Celler Congressional Committee investigating wiretapping in 1955. He told the committee that wiretap interceptions had been invaluable to his office, and that without wiretapping, his office would not have been able to solve a number of major crimes.⁶

Hogan credited wiretapping with unearthing the large-scale corruption involving thirty-five top college basketball players who were fixing basketball games for pay. Wiretapping was also used by Hogan's office in the successful investigation and prosecution of a half-million-dollar stolen

bond ring. Among the ringleaders convicted in this case was Irving Nitzberg, a former "trigger man" for Murder, Inc.

Other criminal cases Hogan said would have remained unsolved if it were not for the wiretapping activities of his office were: a gigantic conspiracy of a number of policy operators to fix the winning figures; the embezzlement of \$300,000 from union welfare funds; phony charity racketeering taking \$50,000 to \$75,000 a year from the New York public; a \$107,000 payroll stick-up; a Communist cell in New Jersey, which was placed under surveillance at the request of New Jersey authorities; the New York waterfront racket under the domination of waterfront labor boss Mike Clements; and the labor extortion racket of Johnny Dio.

In addition, Hogan told the committee, his office keeps a wiretap surveillance on parolees and racketeers to collect general information on their activities and contacts. Through this surveillance, Hogan claimed, he had received information of vital importance in helping him keep track of the movements of organized crime in New York. Hogan concluded:

In these and in many other important prosecutions, the investigative technique of wiretapping was invaluable. In a substantial number I may say, gentlemen, it was indispensable. With that in mind it is well to scrutinize with the utmost caution the cries of alarmists who create the impression that this potent crime-fighting implement is or may be abused, and who are inclined to manufacture or inflate incidents and conditions in order to sustain their arguments.⁷

District Attorney Edward Silver of Kings County, Brooklyn, New York, and the New York City Police Department tell a similar story of achievement through the use of wiretapping.⁸ Perhaps the most sensational case involving wiretapping by police and the district attorney's office in Brook-

lyn was the investigation and prosecution of the gambler, Harry Gross. This strange story of wiretapping and police corruption will be related presently.

More recently, through the efforts of the McClellan Senate Labor Racketeering Investigating Committee, the New York law-enforcement wiretapping of labor racketeers has been disclosed. The transcripts of the monitored telephone conversations were turned over to Senate investigators for the use of the investigating committee. A similar turning over of New York law-enforcement wiretap information on a bootlegger to federal law-enforcement authorities for the purpose of prosecution was recently outlawed by the Supreme Court of the United States.⁹ The Supreme Court ruled that the Federal Communications Act prohibited any use or divulgence of information received by means of wiretapping.

At the same time that New York law-enforcement officers state that wiretapping is indispensable in the investigation of crime and that in every major investigation wiretapping is used, they nevertheless insist that wiretapping is used sparingly in New York, in strict accordance with the legislative requirements and without any law-enforcement abuse of the practice.

District Attorney Hogan testified in 1955 before the Celler committee that in the years 1942-54 a total of only 336 investigations out of his office employed wiretapping, requiring 916 wiretap orders.¹⁰ His table showing a breakdown of the types of investigations involved is shown on page 40.¹¹

District Attorney Edward Silver of Kings County, Brooklyn, testified before the Celler committee that in the period between 1950 and 1955 his office tapped a total of 290 telephones.¹²

Hogan's and Silver's figures belong to a different world

TYPES OF INVESTIGATIONS WHERE WIRETAP ORDERS
WERE SECURED AND TAPS INSTALLED, 1942-54¹³

Categories of crimes	Number of investigations in which wiretaps were installed
Larcenies and allied frauds	76
Extortion, coercion, blackmail	74
Organized gambling (lottery, policy, bookmaking)	37
Bribery and official corruption	35
Homicide	17
Abortion	14
Narcotics	13
Robbery, assault, and possession of weapons	12
Compulsory prostitution	10
Perjury	8
Usury and rent gouge	8
Burglary	7
Other sex crimes (sodomy, impairing morals, prostitution)	7
Black market (wartime)	4
Sabotage, espionage, Communist activity (for federal government, wartime; New Jersey, peacetime)	3
Ambulance chasing	3
Others (libel, arson, violence, city charter, jury tampering, forgery, baby black market, escape)	8
Total	336

from that of the statement by Mr. Justice Douglas, in his book, *An Almanac of Liberty*, that:

During 1952 there were in New York City alone at least 58,000 orders issued which allowed wiretapping—over 150 a day every day in the year. The New York system has in practice been oppressive; it has been used as the means whereby police have obtained guarded confidences of people and used the information for corrupt purposes.¹⁴

District Attorney Silver told the Celler committee that after reading Mr. Justice Douglas's statement, he attempted

to obtain wiretap statistics from the police and district attorneys in New York for the year 1952. He reported ¹⁵ he learned that in that year the police department had 338 orders, the district attorney of New York County had 60 orders, the district attorney of Kings County had 54 orders, the district attorney of Bronx County had 14 orders, the district attorney of Queens County had 12 orders, and the district attorney of Richmond had two orders, making a grand total of 480 orders for the city of New York, which, of course, was far removed from the 58,000 figure mentioned by Mr. Justice Douglas.

The Celler committee took up the matter of resolving this difference and called before it Sidney Davis, Esquire, a New York attorney who had provided Mr. Justice Douglas with his information. Davis testified ¹⁶ that Mr. Justice Douglas had misunderstood the information he provided since he had not told the justice that there were 58,000 orders, but that there were 58,000 taps, which included legal and illegal taps. He said that his information came from a number of police officials and judges who were intimately acquainted with wiretap practice in New York. These individuals told him that there were from a thousand to somewhat in excess of a thousand wiretaps a week, and that the general estimate of wiretaps for the year in New York City was 58,000. When questioned as to the names of the public officials who gave him this information, he testified that it had been a number of years ago and he could no longer recall their names.

Subsequent to the Celler committee hearings, District Attorney Silver set out to disprove the Douglas statement. He polled all the district attorneys in the state of New York and offered his findings to the New York Joint Legislative Committee to Study Illegal Interception of Communications created in February of 1955.¹⁷ Of the 61 counties replying,

prosecutors in 32, accounting for a population of 13,087,524, reported they used wiretapping, while prosecutors in 29, accounting for a population of 1,503,282, reported they did not use wiretapping.

The responses to Silver's poll showed that in the period between 1950 and 1955 all the district attorneys in the state of New York, together, obtained 2392 wiretap orders. In 1952, the year Mr. Justice Douglas credited with 58,000 wiretaps in New York City alone, the total of wiretap orders acknowledged by New York prosecutors in the entire state was 419.

According to the District Attorney's reports, 1681 of the 2392 wiretap orders in the five-year period were obtained in vice investigations, that is, investigations of bookmaking, lottery, prostitution, and similar crimes. This is an interesting admission in the face of persistent claims by prosecutors that wiretapping is reserved for felony investigations and only infrequently used in vice cases.

The sixty-one prosecutors replying to Silver's poll apparently believed that the New York wiretap law was being religiously obeyed by private parties as well as police agencies. At least, there was an almost total absence of complaints received by them. Only one complaint was reported concerning illegal wiretapping, and no prosecutor had received a complaint that wiretap information had been abused or misused. It was on the basis of the lack of complaints that Hogan told the Celler Congressional Committee in Washington that he didn't believe there was much illegal wiretapping being done in New York and the stories of abuses were "the cries of alarmists . . . who are inclined to . . . inflate incidents and conditions in order to sustain their arguments."

In the meantime, however, as we shall see later, police were engaged in wholesale illegal wiretapping, during the Harry Gross era and afterward, and private detectives were outdoing one another in illegal wiretapping for worrying spouses, competing businesses, and political factions.

Observers of New York wiretapping practices have found it hard to believe that New York law-enforcement officers, who credit wiretapping with the solution of most of their major crimes and who consider it indispensable in the investigation of organized criminal activities, resort to wiretapping as infrequently as they report. During the Celler committee hearings, Chairman Celler interrupted District Attorney Silver with the statement:

Mr. Silver, I am not going to be so naive as to believe that the police are not extensively tapping wires. If you have a method which is so easy—as has been disclosed before this committee—makes it so easy for the police to tap a wire, I cannot conceive how, in ordinary circumstances, the police wouldn't avail themselves of that very, very facile method of detecting crime. It makes it very convenient, it is economical and I can't believe that there are so few wiretaps as indicated here by your records.

I believe you are utterly sincere in what you say, but I do believe what we read in public print and what we have heard before this committee, that this practice is widespread. It is widespread by the officials, it is widespread by the non-officials, and that is my firm belief at this juncture. I would like to be disabused of that idea if I could, but nobody has yet disabused my mind.¹⁸

Actually, statistics as to the number of wiretaps are not very meaningful. They do not reveal the quality or purpose of the wiretap, or the length of time the wiretap stays on and the number of conversations overheard. They do not

identify the people whose conversations are intercepted, whether they are incidental callers, friends, or family unrelated to the criminal activity; or professional people, such as lawyers or doctors giving confidential advice.

Further, there is considerable doubt that accurate records of wiretapping activities are available. A former assistant district attorney of New York, who spent nine years as a prosecutor assigned to important racket investigations, states that the New York district attorney's office maintains no central records of wiretapping activities.¹⁹ He says that a copy of the wiretap application and order is placed in the original file of the case. In order to trace the wiretap activity of the district attorney's office, he said it would be necessary to go through the thousands of files, fishing for the orders. District Attorney Hogan branded this statement as untrue and offered his statistical tables as the proof that records are kept by his office.²⁰

The former prosecutor also states that the same problem exists in the General Sessions Court where applications for wiretap orders are made by the district attorney's office.²¹ No periodic reporting is made of the number of orders issued, and each judge keeps his own batch of orders according to his own system. In many cases, the orders are not kept by the judge but returned to the assistant district attorney presenting the application because of the judge's disinclination to be associated with the contemplated wiretapping or his unwillingness to have in his possession information which would indicate whose phone is being tapped.

Most of the wiretapping done by the district attorney's offices in New York City is authorized by court order. This presents no problem to the district attorney, as the court order is easily obtained. Prosecutors insist that some judges are more difficult than others about the issuing of orders

and sometimes endeavor to interrogate the assistant district attorney seeking the order. In 1955, one judge received widespread publicity through his refusal to issue a wiretap order and his general denunciation of law-enforcement wiretap practices.

However, prosecutors quickly learn which judges will be more receptive to their applications, and consistently take them to these judges. In Manhattan two or three judges of the Court of General Sessions receive most of the district attorney's business. It is practically unheard of for a judge to fail to grant a wiretap order for the district attorney.

District Attorney Hogan's office has been accused of political wiretapping, although Hogan has denied this, pointing out that he was an unpolitical district attorney and has been supported by all the political parties except the American Labor Party on four different occasions when he ran for office. The charge was made by former assistant district attorney William Keating, who testified before the Celler committee.²² To support his claim, Keating pointed to the wiretap placed on the telephone of Carmine De Sapio in July of 1948 by Hogan's office. De Sapio was a Democratic district leader, and according to Keating there was a heated controversy between the mayor of New York and various factions of the Democratic organization in New York County in regard to the nomination and election of a surrogate.

The wiretap on De Sapio had been installed under the authorization of a court order issued on the basis of an affidavit stating that De Sapio had been approached with a sum of money (\$5000) to pay to a detective lieutenant for the purpose of buying him off from testifying against a defendant charged with the waterfront murder of Anthony Hintz. Keating testified that he had prosecuted the defendant in the Hintz murder case and had obtained a convic-

tion in December of 1947 with the aid of the lieutenant detective named in the wiretap order. Six months later, when the wiretap application against De Sapio was presented to the court, ostensibly to obtain information concerning the purported bribe of the lieutenant detective, the Hintz case had been completed, the lieutenant detective had done his duty, and the investigation and prosecution had been closed. Keating called this application fraudulent, and charged that the wiretap order was obtained solely for political purposes.

Keating also revealed that while he was in the district attorney's office he ran across a wiretap practice that existed in 1939 or 1940 while Thomas E. Dewey was district attorney. He said,

. . . I was looking through the old files of the old investigations, in connection with the waterfront investigation. I went searching through the office to find out if there were any previous waterfront racket investigations, and found there had been one back under Mr. Dewey's office, although there was no real distinction between Mr. Dewey's staff and Mr. Hogan's staff. They were practically the same staff that continued over the years.

I found that back in the later '30's there had been a waterfront investigation. I went looking through the wiretap orders. You had to go through all the different files to get them, because I wanted to read some of the old wiretap reports, and before I could find them in the files, I had to get the information from the court order.

I was amazed to find that a number of different wiretap orders were drawn on different phones on different investigations all using the same case head or the same investigation, as the basis on which the wiretap order was sought.

Now, that means only one thing: it wasn't necessary to do that in order to get the order. It would have been just as easy to draw up an order under the heading of People against

John Doe. "I am in charge of a waterfront investigation, the investigation of murder and so and so and in connection with it I feel I have reasonable grounds to believe that I can obtain evidence of crime by tapping this wire."

But, apparently it was easier—and this is only a few years after the Constitutional Convention that permitted this—it was easier just to use the same general heading. I remember the name of the case that covered a number of different taps.

It was an investigation involving the search for a fugitive in connection with a taxi cab extortion case and the name of the fugitive was a Patsy Murray. I remember the name because I saw it so many times in so many different wiretap affidavits. That was back around 1939 or 1940.²³

Both District Attorney Hogan and District Attorney Silver report that they have tightened up wiretap procedures in their offices so as to provide safeguards and controls not found in the New York statute. For example, in Hogan's office, it is claimed that any assistant district attorney desiring to install a wiretap must first convince his bureau chief of the necessity and desirability of such action. Then the district attorney himself must approve and initial the application for the order.

Silver and Hogan deny that applications for wiretap orders are perfunctorily heard by judges of the Court of General Sessions. They also deny that any tapping has been done out of their offices without the authorization of a court order.

The New York statute gives law-enforcement officers considerable latitude regarding the content of a wiretap application. All that is required is a statement that there is reasonable ground to believe that evidence of crime may be obtained by interception of conversations over a specified telephone. An example of a New York wiretap application follows:

County Court, Kings County.

X

IN THE MATTER

of

INTERCEPTING TELEPHONE COMMUNICATIONS
BEING TRANSMITTED OVER

oo o 0000

and

oo o 0000

X

STATE OF NEW YORK
CITY OF NEW YORK
COUNTY OF KINGS

ss.:

_____, being duly sworn, deposes and says:

That he is an Acting Lieutenant in the Police Department of the City of New York, and Commanding Officer of the ooth Detective Squad.

That on _____, 19____, at 9:10 P.M. one _____ was shot and killed in front of _____ Street, in the Borough of Brooklyn, City of New York. That deponent's detective squad, together with others, have since been conducting an intensive investigation to apprehend the person or persons guilty of said homicide.

That on _____, 19____, the _____ ship "_____" was docked at Pier oo, Brooklyn, New York, taking on cargo. Part of the cargo placed in a locker located in the Number o hatch of the said vessel consisted of _____ revolvers. During the loading of the revolvers _____ were stolen. Each revolver was marked with a serial number. It has not been established that the murder weapon is one of the oo revolvers stolen. Examination of the longshoremen engaged in the loading of the locker of Hatch Number o of the vessel, led to the thieves of the said revolvers, and investigation shows that oo of the revolvers were sold to _____ by the thieves. The said _____ has been missing from his home at _____ Street, Brooklyn, New York, for the past two weeks. He is married to _____, who is the

daughter of _____, who resides at _____ Street, Brooklyn, New York.

That a telephone instrument bearing number oo oooo is maintained by _____, at _____ Street, Brooklyn, New York, and a telephone instrument bearing number _____ is maintained by _____ at _____ Street, Brooklyn, New York. It is your deponent's belief that the said telephone instruments are being used to assist _____ in remaining a fugitive, and by reason thereof there is reasonable grounds to believe that evidence of crime may be obtained if the Police Commissioner, or his duly authorized agents, be permitted to intercept telephone messages being transmitted over said telephone instruments.

WHEREFORE, deponent prays for an order permitting the Police Commissioner of the City of New York, or a duly authorized agent of the Police Department of the City of New York, to intercept any communications transmitted over the telephone instrument bearing numbers _____, which instrument is located at _____ Street, Brooklyn, New York, and listed in the records of the New York Telephone Company under the name of _____, and permitting the Police Commissioner of the City of New York, or his duly authorized representatives, to cut, break, tap and make connections with any and all wires leading to and from said telephone instruments.

Your deponent further requests that the said order be effective up to the _____, 19____.

No previous application has been made for the relief herein sought.

Sworn to before me this
day of _____, 19____

_____ 24

The most active law-enforcement wiretappers in New York are the police, and not the district attorney's investigators. The two police units principally engaged in wire-

tapping are the Central Investigation Bureau, which was formerly the Bureau of Criminal Information, and the plainclothes men.²⁵ The Central Investigation Bureau is actually the custodian of all the police department's wiretap equipment and installs wiretaps at the request of the various detective divisions and plainclothes men. Most of these wiretaps are installed in investigations of major crimes, such as murder, robbery, narcotics, bribery and corruption. Gambling and vice investigations are principally the responsibility of the plainclothesmen.

The members of the Central Investigation Bureau are primarily technicians, installers, and repairmen. They claim to have installed 181 to 185 wiretaps a year.²⁶ As was pointed out earlier, there is hardly any way to check the accuracy of these figures. However, the operations of this bureau indicate that the number of taps installed by it must be much higher than 181 to 185. For instance, the bureau possesses 77 impulse dial recorders which are used in conjunction with a wiretap to record the dialed-out number.²⁷ These dial recorders are constantly in use, and no more than twelve of them remain idle during any one day.²⁸ Thus, 65 dial recorders are daily in use.

Also, a tap can be on sometimes for as little time as a day and sometimes for a week. It is true that some taps remain for even longer periods of time. But assuming each of the 65 dial recorders, which were constantly in use, remained on one investigation for the average period of one week, this would mean that each dial recorder was used in 52 investigations during the course of one year. Through the simple process of multiplication, it would appear that the dial recorders were used roughly in 3400 investigations, or 3400 wiretaps in one year. Dial recorders are not used in every wiretap installation; so, therefore, the total num-

ber of taps for the bureau would be in excess of 3400 for one year.

Another way of reconstructing the number of taps installed by the Central Investigation Bureau is by the work schedule of the wiretap installers. There are about ten such installers assigned to the Central Investigation Bureau, most of whom prior to their service with the police department served as linemen, installers, or repairmen for the telephone company. These installers work an eight-hour day, five days a week, spending most of their time installing taps.²⁹ On days when they do not install taps they repair equipment. Some taps can be put on in a matter of minutes; once in a while, where it is difficult to get a location, it might take as long as a week to make an installation. However, usually the tap is installed on the same day in which it was requested. Therefore, assuming each installer installed one tap a day for four days during the week, allowing one day a week for the making of repairs, there would be forty taps installed a week by these men, or a little over two thousand taps a year.

Assuredly, these are pure approximations, roughly arrived at. The real figures might be more or less than our estimate, but considering the number of wiretap technicians assigned to the Central Investigation Bureau and the quantity of equipment possessed by this bureau, the approximation of 2000-3400 wiretap installations a year by this bureau appears to be much more reasonable than the 181 to 185 reported. It may be that the 185 taps referred to by the bureau were the only taps authorized by order, and that all other tapping done by the bureau was done without a court order. This would, of course, explain the reluctance of the bureau to mention the additional taps.

Wiretapping by the plainclothesmen is a different story entirely. In the first place, the targets of the plainclothes

division wiretappers are not the suspected murderers, robbers, and other felons with whom the members of the criminal investigation bureau allegedly busy themselves. Rather, they are the bookmakers, with a fair sampling of prostitutes and liquor code violators thrown in. In the second place, the plainclothes division wiretappers are not performing an installation service for other police units, but are wiretapping for the purpose of making their own arrests.

There are roughly four hundred plainclothesmen in the New York City Police Department, broken up into twenty divisions. New York Police Department officials state that only one to three men in a division are assigned to wiretapping work. Actually, all the men work in teams of two, one man in each team serving as a wireman.⁸⁰ Thus, most likely, there are at least two hundred plainclothes division wiretappers at work in New York City.

Although, officially, police wiretapping equipment is placed in the custody of the Central Investigation Bureau to be loaned out only on special request by superior officers and other police units, many wiretapping plainclothesmen possess their own wiretapping equipment, usually basic and rudimentary, but enough to do the job effectively.⁸¹ Possession by plainclothesmen of this equipment violates police regulations.⁸²

The story behind present-day police regulations on wiretapping starts several years ago with a sensational racket scandal that stunned even the blasé New York City community. The Harry Gross investigation illustrates plainclothesman activities existing in 1950 and for a number of years before. The story is told in the report of the Special Investigation by the District Attorney of Kings County and the December 1949 Grand Jury.⁸³ This Grand Jury was kept in session until April, 1954, to complete the investigation which began during the summer of 1950. It was principally

a wiretap investigation conducted out of the office of the then district attorney, Miles MacDonald. A private specialist, who had been retained to supervise the wiretapping, was able to obtain cooperation from the telephone company to extend leased lines to a central monitoring headquarters where a great number of conversations going over different telephones throughout the Brooklyn and New York City area could be monitored by the simple technique of being "connected in" at the main frame of the telephone company.⁸⁴

On September 14, 1950, the day before Gross's bookmaking headquarters was raided and Gross was arrested, the district attorney's wiretappers intercepted a telephone call between Murray Michaelson, the manager of Gross's headquarters, and one of Gross's runners, Arthur Karp. Just as this call was being completed, Harry Gross called in to Murray Michaelson and this conversation also was intercepted. Both conversations indicated to the district attorney that not only was Gross operating a gigantic bookmaking business, but he was also enjoying complete police protection for which he was paying handsome sums in bribes.

The raid on Harry Gross's headquarters which followed, though successful, was premature. However, it had become necessary for the District Attorney's men to move quickly. Police wiretappers had picked up a disquieting conversation between an apparently high-ranking police officer and Gross, in which the officer tipped off Gross that the Kings County district attorney was tapping his phones.

Gross, who maintained his headquarters in Nassau County, believed he was outside the jurisdiction of the Kings County prosecutor. He had not counted on the strategy of Julius Helfand, the assistant prosecutor in charge of the investigation, which was to make the crime of conspiracy the principal charge against Gross.⁸⁵ This would permit the prosecutor to use evidence obtained in the Nassau County operation which

directly related to the activities of Gross or the members of his combine in Kings County.

Gross was arrested and indicted, charged with sixty-six counts of bookmaking and conspiracy. He pleaded guilty to sixty-five counts of bookmaking, and, confronted with the possibility of a long prison sentence, decided to cooperate with police in an effort to receive favorable consideration by the court. Prior to his trial, Gross had indicated that he could tell a story of vast overall corruption in the police department. "I have a hunch," he said, "there are going to be a lot of worried people in the city soon." Now, in his effort to obtain leniency, he told his story, declaring that he paid one million dollars annually for protection, and naming the men involved.

Police officers implicated by Gross were all indicted and scheduled for trial in September, 1951. At the trial, Gross took the witness stand, identified all the defendants as men he knew, and under questioning testified to the point where he was about to implicate the defendants in the conspiracy. Then he refused to go on. He was held in contempt of court (being sentenced later to twelve years' imprisonment with the bookmaking charges still pending), at the request of the district attorney, who bitterly assailed Gross for destroying the prosecution against the corrupt police officers. Later Gross agreed to testify against three of these police officers at police trial board proceedings, and in return for this cooperation, his sentence was reduced to six years.³⁶

In Gross's story of police shakedowns of bookmakers and the day-to-day "cat and dog" relationship between the bookmakers and the plainclothesmen, illegal wiretapping played a major role. Only one incident of wiretapping by a plainclothesman was singled out in the 1954 report. This incident was picked to show police collusion with racketeers and indeed was one of the most bizarre tales related by the Grand

Jury. It appeared that police investigators had constantly given the "Dugout Cafe" a clean bill of health, despite numerous complaints that it was a notorious bookmaking center. Finally, one plainclothesman was assigned to wiretap the telephones located in the Dugout. The Grand Jury's presentment described what happened:

Then followed a most amazing and almost incredible procedure. The said plainclothesman, according to his own testimony, approached the owner of the Dugout and directly stated to the latter that he had an order to tap the wires of the Dugout. Immediately adjacent to the Dugout Cafe was a wooden shed and behind the Dugout was an open lot. The police officer testified before us that he thereafter set up the physical apparatus for wiretapping and intercepted telephone calls made from the Dugout. He did this while sitting in the open lot from noon until 2:00 o'clock in the afternoon on those days when baseball games were being played at Ebbets Field. So visible and notorious was his physical presence while engaged in wiretapping that he was easily observable by a casual pedestrian walking along the street.

It is, of course, perfectly evident that the success of wiretapping depends upon the secrecy with which it is conducted. The basic objective of tapping the wire of the Dugout was obviously frustrated by the physical manner in which the said police officer tapped these wires. It is scarcely necessary to add that no evidence of bookmaking was obtained as a result of said wiretapping. We believe that there was never a bona-fide intent to procure such evidence, but that the entire operation was an idle gesture designed only for the record.

This purposely stupid act, however, was not the most serious type of wiretapping activity engaged in by the plainclothesmen. Julius Helfand, then the assistant district attorney in charge of the Grand Jury investigation, reported there were many instances of illegal wiretaps which were installed by members of the plainclothes division.³⁷ He said

that these wiretaps were made without court orders and were installed not for the purpose of apprehending bookmakers, but for the purpose of obtaining information as to the extent of the business the bookmakers were doing. This information was passed on to other plainclothesmen who covered the areas being tapped. The bookmakers were approached by these plainclothesmen and shaken down for sums of money commensurate with the business they were doing. Regular payments were required thereafter if the bookmaker wanted to continue to operate. A constant check on a bookmaker's telephones informed the plainclothesmen when their price should go up or down, depending on the fortunes of the bookmaker.

Some of these wiretaps, Helfand reported, were authorized by a court order. The affidavit would contain information sufficient to satisfy the New York law and the judge, but the facts would be untrue. The fraudulent applications were used to obtain authority for wiretapping to aid the plainclothesmen in coercing illegal and corrupt payments from gamblers. This illegal police wiretapping was also carried on for the purpose of a novel shakedown operation.³⁸ The plainclothesmen engaged in this activity were on the payroll of Harry Gross. They received a bonus for bringing additional bookmakers under the control of Gross's combine. Wiretapping was employed by these plainclothesmen as a means of locating independent bookmakers, who were then confronted with the choice of being arrested and run out of business or accepting the leadership and control of Harry Gross. The decision was easy. Few, if any, were arrested.

Former plainclothesmen who were assigned to investigating bookmaking activities at the time Harry Gross was operating and telephone company employees who aided these plainclothesmen tell the same story.³⁹ The following excerpts from an interview with a former plainclothesman shed light

on plainclothesmen wiretapping activities between 1947 and 1951:

Question: Did you engage in wiretapping as a plainclothesman?

Answer: I did any number of illegal taps—very few legal taps. Most of mine was what you would call an illegal tap.

Question: You mean a tap without an order?

Answer: Without a court order. In fact, I wouldn't know how to go about getting a court order. But I can tap your phone for you.

Question: How many men in a particular plainclothes division would be capable of being wiremen?

Answer: Well, let me put it this way. In my office we have what we call—I'd say four—what you would technically call wiremen. Now being a wireman mostly is connections. I could tap a wire from a box—a cross box—from the pair—I could do it with a set of radio headphones, with a condenser on it which costs me about twenty cents, that you can't tell that I'm coming in on your wire.

Question: That's right at the pairs.

Answer: Right at the pairs. Now that's at the back of the house or I can go to the pair box or cross box on the corner on an overhead pole I can string my own wire for three or four blocks. And what I used to do was—I had my radio in my car so equipped that when I turned on the radio of the car I would string a line two or three blocks away from the place I was tapping. Then I'd drop a line down the side of the pole and into my car and I'd pick it up on my radio while I sat there reading a book.

Question: Did you use any automatic equipment?

Answer: No, some of the fellows in my office did have tape recorders, but the stuff isn't important either. The most important thing is the connection with the telephone company.

Question: What did you need that for?

Answer: Well, in other words, I get the name of John _____ of _____ Cataber Avenue, his telephone. Now I want to know where the cross box is and what his pairs are. What is the furthest point from his house that I can pick them up and what are the pair numbers. If I have the right connection with the telephone company, I can get the information for a nominal fee. That's all done on a private line.

Question: What would you say the going rate on this telephone information would be?

Answer: Well, I imagine \$25.

Question: For a pair and cable number?

Answer: That's right.

Question: Did you ever or did any of the men ever need a connection with the company to actually install the thing?

Answer: No. No, we all did our own. And after you've done it for a while—I don't think I was in for three months before I was tapping.

Question: Now would you say this was principally true with most of the plainclothesmen?

Answer: Yes, I would.

Question: And they would have their similar type of equipment, the condenser and line and earpiece?

Answer: A lot of them have the telephone headset or the telephone handset.

Question: Is this something they buy themselves?

Answer: Oh yes. It's all bought on your own money.

Question: Do you know whether this is true today? Have you kept in touch with the situation enough to know whether it's true today?

Answer: Yes. I do know it's true today.

Question: Because I know that back around 1951 there was some effort to take away equipment from individual plainclothesmen and have it all come out of the central offices.

Answer: Well, sir, a smart plainclothesman doesn't let anybody above his supervisor know that he had that equipment.

Question: Were some of the plainclothesmen working closely with some of the bookies?

Answer: Yes, that's very true—very true. Let me put it this way to you. I'm being very candid with you—if I'm a plainclothesman and I'm making \$80 a week, and I go in on a pair and I come up on a hot pair—in other words it's not a pair that is being given to me as a friend—we knew of certain telephones that were going and they were allowed to go. Now if I came up with what we call a hot pair and I went in on it on my own—well, that could be worth anywhere from \$500 to \$1000 to me personally.

Question: You mean to keep them in business?

Answer: No, just leave them in business. Just walk away from it.

Question: Would that be the going rate on that?

Answer: Oh yes, oh, definitely, \$500 up.

Question: And the figure, I imagine, would be based on the amount of business they're doing.

Answer: That's right. If you grab the sheets on him—the worksheets. Now if you grab a bookie's worksheet—there may be something else that's of interest to you. It's a standard practice. If you grab a bookie's

worksheet and he wants to—and you're going to court that afternoon with it—which is also standard practice—and he wants his worksheet back, you charge him for his worksheet according to the amount of play he has on his worksheet. If he doesn't come across, as the saying goes, you just pass the word in the neighborhood or just let everybody see him get pinched, and then everybody puts in a winner. He has no way of knowing who plays what and you put him out of business. Then all he can do is pay everybody. So it's cheaper to pay you.

Question: How extensive is that practice?

Answer: Oh, let me say that any man who is susceptible and needs an extra dollar will do it.

Question: And would that be true of most plainclothesmen?

Answer: I don't like to say this because I like being a policeman, but I think it's true of almost every cop. I don't say all.

Question: Being perfectly fair to the boys, is it because of the fact that they're doing a pretty difficult and dangerous job, yet they're really underpaid?

Answer: No, I don't think that's the whole text of the thing. As a policeman I'd say that the money wasn't that important. It was important, having children of my own and wanting some little extra things, like a new pair of shoes and this and that now and then, but none of us were ever in a position where we wanted to become wealthy or own farms or beautiful cars, that is the average run-of-the-mill fellow. He just wanted a couple of dollars to see that his children's teeth were fixed and so forth. But we can always drivel along on our salaries. But public opinion was—I think—the most important thing—the disrespect shown to policemen in the past couple of years.

Question: Do you mean that public opinion assumed that the boys did it so they said the hell with it?

Answer: That's right. There are a number who will do it and do it continuously. The average fellow will take a bribe of say \$5 to \$10 and he worries about it for six years later. That's the average policeman. I know some and believe me I know quite a few who wouldn't touch a nickel if you forced it into their pockets. Unfortunately those men are out in uniform on the street, and they're not where they have the opportunity of taking anything. But it's a terrible temptation to a man who makes, I'll say, \$80 a week and he's walking around with \$1.50 in his pocket and he knows his wife has \$3 to run the house for four days and somebody else has \$500 just to walk away with just a piece of paper in his pocket.

Question: To what extent is this practice known by the supervisor of police personnel?

Answer: Well, let me put it this way. A telephone costs \$1500.

Question: To get a telephone in?

Answer: No, to keep a telephone would cost you approximately \$1500 a month. And that has to be divided all the way down the line. The division plainclothesmen realized about \$10 of that \$1500 individually. Now if you have ten plainclothesmen—now that's \$100—that goes for the ten plainclothesmen. Well, believe it or not that's the ratio. Then you have a lieutenant in charge. First you have the two shooflies. They're supervisors in plainclothes. They could be a lieutenant, they could be a sergeant. They have to be cut in for a share. The borough office has to go in. His boss has to go in—it goes right up the line.

Question: What does the plainclothesman think about taking this kind of money?

Answer: Well, sir. I'll tell you. The average policeman doesn't look on bookie or policy money as dirty money. Unfortunately, I know it's wrong to take it. Nobody has to tell me that and I knew I was jeopardizing my job if I took it, but what I do say is this—it's a well-practiced policy. If you take prostitution money, it's dirty money, and a patrolman who's been taking from a bookmaker will look down on you for taking prostitute's money. Or if you take narcotics money. Nobody will stand with you. Dirty money is something we don't do. Or you shake down a degenerate. Those are disgusting things to us and believe me, I've never taken a penny from them in my life. You can offer me \$100,000 to let you walk away with an ounce of heroin and I'd lock you up. But plainclothesmen are not worried about gambling itself anyhow. Well, as we always put it. They gambled for Christ's clothing and they haven't alleviated it since then, so how am I to knock it out. Maybe it's not the right way of thinking of it, but we're all human.⁴⁰

The plainclothesman explained that the bookie has a choice of buying complete protection or a cheaper form of protection which would only guarantee his not being arrested by a particular squad or division. Complete protection would include payment to everyone up the line so that no one would make an arrest.

On December 29, 1950, the Grand Jury made the following recommendations for the purpose of correcting wiretap abuses by New York police:

The loose, irregular and careless methods of intercepting telephonic communications employed by members of the po-

lice department prior to the appointment of the present Police Commissioner, are invidious and supply fertile grounds for the breeding of police bribery and corruption. We therefore respectfully suggest and recommend to the Police Commissioner of the City of New York that the necessary amendments to the rules and regulations of the Police Department be adopted to effect the following results in all cases of wiretapping:

1. All requests for wiretapping orders should be made to the Legal Bureau only by a Captain or higher ranking officer in the division embracing the area where it is desired to tap wires.

2. An affidavit in support of a wiretapping order should recite all prior applications made for orders to tap the same telephone and the current status thereof.

3. That affiant should appear personally before the Legal Bureau and there swear to the truth of the statements contained in said affidavit.

4. Where the facts stated in such an affidavit are alleged upon information and belief, said affidavit should state the precise and detailed sources of such information and the grounds for the affiant's belief. The duration of the order permitting wiretapping in any instance should not exceed sixty days.

5. The original order of the judge or justice permitting said wiretapping should be delivered by the Legal Bureau to the officer at whose request the order was obtained and a receipt therefor duly obtained.

6. Upon receipt of the original order, the commanding officer should assign, in writing, to a specific police officer the duty of executing the particular order, and a copy of such assignment should be forwarded to the Legal Bureau. The police officer to whom such duty is assigned, shall file the original or copy of said order with the proper telephone company and a report thereof made by him to the commanding officer reasonably thereafter.

7. The police officer thus assigned to the duty of intercept-

ing the telephone communications, should present a written report to his commanding officer, thereafter, stating the place where the necessary connections have been made and a copy in writing should be sent by the commanding officer to the Legal Bureau.

8. The police officer tapping said wires should submit daily written reports to his commanding officer and to no other person, of all conversations and telephone numbers intercepted by him.

9. All original notes or writings of communications intercepted or other matters relative to said wiretapping should be forwarded by the police officer at the end of each day to his commanding officer.

10. All paraphernalia and equipment, such as earphones, recorders and tape used by any police officer in tapping wires should be the property of, and turned over by him to the Police Department.

11. At the end of each listening period, the recorder should be sealed and tape marked with the date and time of sealing and should be taken by the police officer to the division office where it should be kept safely. Any arrests which may result from said wiretapping should be reported in writing to the Office of the Chief Inspector and a copy of said report sent to the Legal Bureau. Unless duly authorized, no police officer engaged in wiretapping should disclose to any person other than his commanding officer, the results of said wiretapping or any matter incident thereto.

12. Upon the conclusion of the tapping of any telephone, all records and reports and writings concerning said tap should be kept together so that complete information shall be immediately available with respect to any telephonic interceptions.

13. All reports, recommendations or advice with respect to any wiretaps should be in writing.

14. To effectuate the intent and purpose of the foregoing recommendations, the police commissioner should provide for maintaining and preserving all proper records.

It is respectfully suggested that if for any reason it is mechanically inadvisable to adopt any of the foregoing recommendations, the Police Commissioner consult with representatives of the Office of the District Attorney of the County of Kings so that proper revision may be made to the end that the objectives herein sought may properly be achieved.⁴¹

In 1951, the New York City Police Department put into effect police regulations governing wiretapping which were substantially the provisions recommended by the Grand Jury.⁴² Present-day New York police wiretapping practices conform more to the requirements of the New York wiretapping law than they did at the time the 1949 Kings County Grand Jury directed a spotlight on them. Reformed procedures were inevitable after the Harry Gross investigation; the United States Congressional Committee hearings; the scandal of the 55th Street private wiretapping factory (of which more will be said later); and the hearings and investigations of the New York Joint Legislative Investigating Committee. Police wiretapping practices were constantly under scrutiny from 1951 to 1957. Yet, during this "goldfish bowl" period, the 1951 police regulations on wiretapping remained for the most part "paper rules," and much police wiretapping followed the pattern exhibited during the Harry Gross era.

Today most police wiretapping is done for law-enforcement purposes, whether carried on under the authorization of a court order or without the authorization of a court order. Top police officials repeatedly emphasize that the failure of a police investigator to comply with the 1951 police regulations on wiretapping will result in disciplinary action.

There is a constant effort on the part of law-enforcement officers to play down gambling wiretapping and to emphasize that wiretapping is principally used in investigations of

major crimes. But the wiretapping done by plainclothesmen is still in large part aimed at bookmakers' operations and prostitution. As a matter of fact, more wiretapping by police is done in gambling cases than in any other kind of case. In gambling and in vice matters generally, there is steady pressure on the plainclothesmen to maintain a certain arrest record. Continuous wiretap surveillance, without court order, enables plainclothesmen to maintain this record.

Even in the cases where the purpose of the wiretapping is to obtain evidence to use in a prosecution in court—which, of course, requires a court order—police investigators often first wiretap a telephone without an order to sample the conversation and learn what kind of evidence an order would produce.⁴³ This protects them from going to the trouble of getting an order and then failing to collect any incriminating evidence against the suspect. Sampling the conversations first also permits the police to build an excellent conviction rate record on wiretap orders.

In order to sample the conversation, the police wiretappers still need the telephone line information for the purpose of making a wiretap connection. Telephone company employees have not been hesitant in giving the police this information, even without being presented with an order.⁴⁴ It is still true today, as it was during the time of the 1949 Kings County Grand Jury investigation, that the best asset of the plainclothesman is his telephone company contact.

Actually, the practice of plainclothesmen tapping without court orders is not based on any difficulty in obtaining a court order. Very often inconvenience alone prompts a plainclothesman to wiretap without a court order. As one former plainclothesman put it, "If I see a known gambler going into a telephone booth, I'm going to get on the line right away. If I have to go through the procedure of making an application to the legal department of the police department,

by the time I get my court order the man is finished using the phone and out of the booth. He may use another booth the next time with another telephone which my first court order will not cover." ⁴⁵ If a plainclothesman is tapping a bookmaker for his own personal reasons, he will tap without an order because he wants no record of the tap or any requirement to report on the results of the tap. He may also be fearful that if he indicates on an application for a court order who he is after, other plainclothesmen might move in on the catch, or a leak might develop warning the bookmaker of the tap.

Some plainclothesmen claim they are reluctant to wiretap under a court order because of the various possibilities of leaks ranging from within the police department itself, including the chambers of the judge, to telephone company agents who are approached for telephone line information. This fear of leaks produced by applying for a court order to wiretap was reported in 1953 to a subcommittee of the Committee on the Judiciary of the House of Representatives by Attorney General Rogers, then a deputy attorney general.⁴⁶ Rogers had been an assistant district attorney in New York, and on the basis of this experience pointed out that not much is gained by a court order, since the court usually takes the prosecutor's word anyway and the application for a warrant is usually phrased in general terms of law violation and is not factual. Even more important, Rogers stated, was the danger of leaks. He explained that while he was an assistant district attorney in New York they had a serious problem of leaks when judges heard applications for warrants.

Out of fear of leaks from telephone company employees, investigators in the district attorney's office in New York today, while wiretapping under court orders, prefer to locate their own line connections to install a wiretap, rather

than present the court order to telephone company employees.⁴⁷

How much wiretapping is done this way by plainclothesmen is, of course, a matter of speculation. Accuracy of the figures, however, is not really essential, since what we are after is only an idea of the quantity of wiretapping done by police. The figure of 338 police wiretaps in New York City for the year 1952 presented to legislative bodies by District Attorney Silver of Kings County is hardly credible. Of course, the Kings County prosecutor stated that he had obtained these figures from the New York City Police Department, and that they referred to wiretap orders. It may well be that the police department can show no more wiretap orders than 338. However, the actual wiretaps installed by police must far exceed this figure. It would seem that plainclothesmen in New York do more wiretapping without the authorization of a court order than they do with such authorization.

One former telephone company employee, who frequently provided plainclothesmen with information they needed to install illegal wiretaps, reports that for every ten legal wiretaps installed by plainclothesmen with court orders, there are ninety illegal taps by plainclothesmen without orders.⁴⁸ Former and present plainclothesmen who were asked to speculate on the wiretap activity of the plainclothes divisions in New York City suggested anywhere from fifty to one hundred wiretaps a day. Since, as we have seen, there are approximately two hundred plainclothesmen doing wire work in New York City, these figures appear to be realistic. Thus, assuming a five-day week, plainclothesmen are responsible for making from 13,000 to 26,000 wiretaps a year. If we add the three thousand or so wiretaps a year we have assigned to the Central Investigation Bureau, it appears that Mr. Justice Douglas's estimate, though still excessive and

erroneous as it relates to orders, is closer to the truth than the figures submitted by the police to the Kings County prosecutor.

Law-enforcement officers have discredited the suggestion that thousands of wiretaps are made a year in New York on the ground that so great a quantity of wiretapping would have to employ more police officers than are available in the department. This argument rests on the assumption that every wiretap requires a "plant" or "stake-out" and a monitoring police officer and exists for an extended period of time. Actually, most police wiretaps are put on and taken off in a very short period of time and do not require any permanent plant. Further, when a particular situation requires an extended period of interception, the use of automatic recording equipment obviates the necessity of a police officer's physical presence.

A typical plainclothesman's tap on a check on bookmaking operations was explained by a former plainclothesman as follows: ⁴⁹ Two plainclothesmen, operating as a team, may observe a man buying a "scratch sheet" from a newsstand. They will then follow him. Usually he will go directly to a telephone booth and make a call to his bookmaker. If the plainclothesmen are acquainted with the area they can in all probability go directly to the terminal box and by using a handset can hear the man placing a bet with the bookmaker. One of the plainclothesmen operates the handset while his partner watches the booth and keeps the man under surveillance. If they are in possession of a pen register they will be able to get the dialed-out number and learn the identity and location of the bookmaker.

In some instances, plainclothesmen follow an employee of a bookmaker. If he leads them to an apartment house or office building, they will locate the terminal box immediately and then attempt to find the telephone which the in-

dividual may be using by means of connecting the handset to the terminal and touching the other terminal with a wet finger. If, however, he goes to a suburban area and enters a private house, they will follow the aerial cable from the house to the terminal box on a pole. If this is still within view of the house, they will follow the cable a little farther to a terminal box out of sight of the house. Then, by the method described above, they will attempt to locate the phone the individual is using. To avoid breaking into the wrong house, they make doubly sure by tracing the cable back to the suspected house.

Plainclothesmen also set up wiretap "dragnets" in areas where there are large concentrations of people. One such area contains a bus stop, a subway station, and a railroad station. Another favorite spot is the bus stop from which the buses leave the race track. Here, it is an easy matter to locate the terminal boxes for the various public telephones and then tap these lines for a short period of time each day.

As of July, 1957, a new deterrent to illegal police wiretapping has been added to the New York law. One of the provisions of the 1957 wiretap legislation brought about by the efforts of the New York Joint Legislative Committee makes it a criminal offense for a law-enforcement officer to wiretap without the authorization of a court order. It is doubtful whether this sanction will be effective. Similar penal provisions have been in effect in Illinois since 1927 and in California since 1905, but no police officer has ever been arrested in California or in Illinois under those provisions, although there has been unlawful police wiretapping in both states for many years. Apparently the New York police are taking a "wait and see" attitude as to whether these laws will be seriously enforced.

For a time the district attorneys were able to purchase leased lines from the telephone company which would enable them to monitor any telephone they had an order to tap in a central monitoring headquarters.⁵⁰ This practice was considered lawful under New York law. Through the simple process of connecting one of the leased lines with the subject telephone's pairs at the main frame of the telephone company, the district attorney's monitoring room would be "on the line." This type of wiretap procedure is preferred by district attorneys and police, since it only requires them to maintain a minimum of monitoring equipment and aids them in policing their own wiretapping crews. If all the wiretapping were being done out of a central monitoring headquarters, it would be easier to spot illegal wiretapping done by law-enforcement officers throughout the city.

As was said earlier, the Harry Gross investigation employed leased lines. Some of the smaller counties throughout New York operate largely on the leased wire system. In one county, a new police building has been equipped with a miniature telephone company switchboard through which a number of leased lines are connected, enabling police investigators to listen in on any telephone in the county upon exhibiting a court order.

However, in New York, shortly after the Gross investigation, and probably because of the publicity given wiretapping in this investigation and in subsequent cases, the New York Telephone Company withdrew its leased line service to district attorneys and police.⁵¹ Officially, it claims that the telephone company faces the danger of suit by overtly engaging in law-enforcement wiretapping, since the Federal Communications Act, which prohibits wiretapping, governs the company's activities. Unofficially, some telephone company officials have told district attorneys that they feared

widespread use of this system for political purposes by some public officials.

Much of the ease with which police officers engage in illegal wiretapping depends on telephone company contacts.⁵² Many of the police wiretappers and district attorney's men assigned to wiretapping have had telephone company training. Thus, they move freely within the company, and often can get services not available to others. Often enough, they rely solely on a telephone company employee, who, against the rules of the telephone company, will sell them line information. It has been demonstrated, however, that the control over this line information has been so weak in the New York Telephone Company that a person with telephone company experience, knowing the language to use, can call the repair desk of the telephone company exchange and obtain line information simply by asking for it. This experiment was recently performed by investigators for the New York Joint Legislative Investigating Committee.⁵³ A telephone number was picked, and a former plainclothesman, who had also formerly been a telephone company employee, called the repair desk of a specific exchange and asked for the pair and cable number and the bridging points of this particular telephone number. Within a matter of minutes, a courteous girl operator read the information over the telephone. Since this experiment was made public, sometime in 1955, the procedures of the telephone company are reported to have been tightened up, making a similar occurrence much less likely, if not impossible.

There are apparently few security measures taken to prevent unauthorized persons working on company lines. One former plainclothesman reports that while he was installing an illegal wiretap on the top of a telephone pole, dressed in khakis, a telephone company supervisor passed by and, mistaking him for a telephone company repairman, called

up to him, asking how things were going. He complained about having a rough time up there, and the supervisor walked on with the reassuring comment, "Aw, take your time and don't work too hard."⁵⁴

It is well known to the law-enforcement agencies that telephone company employees who are willing to engage in illegal activities with them are similarly available to racketeers. This is one of the reasons, as explained earlier, why some police and district attorneys' investigators engaged in legal wiretapping under court order prefer not to serve a copy of the order on the telephone company, but instead hunt out the pair and cable number themselves.

Wiretapping is by no means the limit of New York law-enforcement intelligence techniques. Both the police department and the district attorney's office depend to a large degree on information received from informers.⁵⁵ Rarely, if at all, is the informer put on the witness stand, but he is invaluable as a lead. Informers are mostly paid for their work, but as a bonus they enjoy a relative freedom from arrest.⁵⁶

For a number of years the police department and district attorney's office have used their own undercover agents to obtain direct information from the underworld. These courageous law-enforcement officers, depending almost entirely on their own wits, become members of gangs or habitués of neighborhoods where organized crime has its headquarters, and as trusted "co-conspirators" obtain direct evidence of criminal activity. The exploits of such an undercover agent are dramatically told by "Dan" Danforth, a former district attorney's investigator, in his book, *The D.A.'s Man*.⁵⁷ Disguised as the longshoreman, "Dan O'Brien," he uncovered evidence to convict Lucky Luciano and later to help expose the rackets on the waterfront. There are a number of policemen and district attorney's investigators in New

York even now playing the role of criminals for the purpose of becoming eyewitnesses to major crimes. Law-enforcement officers explain that some criminal investigations can be conducted only with the aid of such agents.

Aside from the human eavesdroppers, the police department and district attorney's offices make frequent use of hidden microphones, hidden transmitters, and still and moving cameras. About ten years ago the Kings County district attorney's office bugged the secret meeting place of some of the "top brass" among New York hoodlums.⁵⁸

Somewhere in Brooklyn, a bar which had lost its liquor license because of the fact that three murders had been committed there in one year was selected by the gangland leaders as a place to meet every Sunday to talk things over. Two private specialists were hired by the Kings County prosecutor to plant microphones in the meeting room. After studying the activities of the mobsters for weeks, they learned that at 8:00 in the morning a caretaker arrived, opened the door, and went to a room in the back to get a broom. Ten minutes later, the manager of the bar arrived and remained in the main room until the mobsters appeared. Thus, the private specialists realized, they had only ten minutes—between 8:00 and 8:10—to enter, install the bugs, and leave. One morning, dressed as electrical repairmen, they followed the caretaker in when he opened the door, and placed two microphones in the main room, pulling the wires down through the floor to the basement. They then entered the basement and drew the wires out the basement window to an alley in the rear. As they were coming up the steps, the manager was just entering the bar.

"What are you doing here?" he snapped.

Keeping straight faces, they answered quickly that there had been a power failure on the street and they were checking all the houses in the neighborhood to find the defect

which had caused it. With this explanation, they walked briskly out of the bar. The manager, evidently, was satisfied.

They returned another day to the alleyway and connected the wires coming from the basement window to telephone lines from which leased wires carried the connection directly to the district attorney's office. Every Sunday for almost a year, the Kings County prosecutor monitored the meetings of the gangland leaders, picking up valuable information about waterfront activities, gangland murders, and other criminal news. Only when the building was condemned and torn down did this happy situation come to an end.

"Dan" Danforth tells of a similar surveillance maintained on the waterfront racketeers in New York City.⁵⁹ Movie cameras, hidden microphones, and wiretaps were used. With the aid of a telescopic lens, pictures were taken of racketeer loan sharks lending money to and collecting money from longshoremen. A microphone was planted in the office of the loan shark leader. Danforth and an electronics expert in the district attorney's office went to the racketeer's headquarters at midnight and placed the hidden microphone in a location they thought would be secure, behind a large picture of Abraham Lincoln on the wall. What happened when three "hoods" walked in on them is related in the book:

We had just installed the microphone and dropped the wire out the window when the door swung open and all the lights were switched on. Three tough-looking hoods stood in the doorway. One, who seemed to be the spokesman, said, "What the hell are you doing?"

I would like to say that it was my quick thinking that saved the day but actually it was Bill O'Sullivan's agile mind. In a voice full of indignation he said angrily, "Don't you people have any consideration?"

The trio seemed to have been taken off balance for a moment. One of the gorillas said, "What do you mean, Mac? This happens to be our joint."

Bill dramatically pointed to the electric clock on the wall. "Do you see that Western Union clock?"

One of the fellows said, "So what?"

"That clock of yours was out of order," Bill said, "and because you people didn't have the consideration to call us, every clock on the West Side is out of order."

The three tough-looking gentlemen actually looked surprised. Bill went on to describe very graphically how all over the city from 14th Street to the Staten Island Ferry hundreds of clocks were stopped and had to be reset.

"Do you know it has taken us an hour and a half to fix this one clock?" he demanded.

"Hell, Mac," the spokesman said, "I'm sorry. We didn't know the clock was broken."

"Well, make it a habit to look at it once in a while," Bill said. "Let's gather up the tools," he said to me. I threw everything in our bag.

As we went out Bill turned and said, "Will you boys lock up?"

The three hoods, just staring at the clock, nodded dumbly.⁶⁰

It is common practice for the police and district attorneys to bug interrogation rooms.⁶¹ It has also been a routine procedure to install microphones in prison cells, as well as the interview rooms used by prisoners in the city jails.⁶² This practice received wide publicity recently in the case of the bugging of Joseph "Socks" Lanza, the convicted labor extortionist.⁶³ Conversations between Lanza, his wife, brother, and attorney were monitored in one of the interview booths in the Westchester County Jail after Lanza's arrest on charges of violating parole. The recorded conversations were used by an investigating committee checking

into the circumstances surrounding Lanza's later release on parole. There are three enclosed visiting booths in the Westchester County Jail, with the prisoner separated from the visitor by bulletproof glass. In the glass there are two perforated discs through which the conversation is held. In one of these booths there was concealed a microphone. It is a prison rule that lawyers holding conversations with their clients are never assigned to the bugged booth; but in Lanza's case the attorney was only one of three persons talking to Lanza, and the bugged booth was used. The lawyer's conversation, of course, was also recorded.

The released transcripts of the monitored Lanza conversations revealed that the parties either believed that they were overheard or had adopted a general plan of talking in riddles. The following excerpts show what the eavesdroppers obtained.

Harry Lanza: The responsibility you know what I am talking about with the little man.

Joseph: Oh.

Harry: And the big man. (Brief silence)

Joseph: Oh, very good, very good.

Harry: Push, you know what I mean? Good. Well, it's not good but I have a little confidence. You know what I mean?

Joseph: Yes, well, I see what you mean but how can they do otherwise and if they go there and do that for me. Up to now they are not working.

Harry: (In Italian) Yes, I know. (In English) Up to twelve o'clock last night nothing.

Joseph: They have not called them?

Harry: I think without it first understand?

- Joseph: Oh.
- Harry: Now we said for them other two fellows who you sat with three weeks ago, you know what I'm talking about.
- Joseph: Oh, yes, yes.
- Harry: (In Italian) What did they say? Fifty-three they put for him.
- Joseph: They don't know about it. Listen to what I say. Oh, yes.
- Harry: They claim fifty-three positively, they know.
- Joseph: Well, who is taking it up from that point.
- Harry: Dwyer, do you understand?
- Joseph: Oh.
- Harry: But he has nothing definite. Now positively they gave it to him in 1953.⁶⁴

Prior to 1957 law-enforcement officers in New York could use hidden microphones at their pleasure, since, unlike the situation in regard to wiretapping, there was no New York law regulating police use of microphones or requiring judicial supervision. Efforts to impose such regulatory provisions had been fought steadfastly by organized police-district attorney associations in New York. In 1957 bugging was prohibited except for police investigations of crime,⁶⁵ and in 1958, following the exposure of transit police bugs employed against transit union officials, the New York legislature passed legislation requiring police to obtain a court order before bugging a conversation, except where a police agent was a party to the conversation.⁶⁶ Law-enforcement agencies were successful in getting a "hot pursuit" provision written into the law. This provision permitted police to install a microphone and record conversation without first getting a court order in cases of emergency. However, within

twenty-four hours of such an installation, an application for an order authorizing the action had to be filed with the court.

It is safe to say that most of the private wiretapping done in the world is done in the city of New York. This is so not only with regard to the number of taps made, but also with regard to the boldness of the tapping; the financial dimensions of the investigations; and the importance of the interests involved. In 1957, a law was passed in New York which may or may not have any effect on the prevalence of private wiretapping. There has been no time to observe the effect of the law. We speak of the New York scene prior to the act of 1957.

In January, 1956, the Secretary of the State of New York conducted an investigation, through the Director of Licenses, of private detective wiretapping. The report which the Director of Licenses submitted in August of 1956 concluded that only twenty-six of the 575 licensed detectives practiced wiretapping.⁶⁷ These twenty-six were active mostly in New York City. Efforts to revoke the licenses of the principal violators met with failure in most cases, since the only evidence possessed by the state was the self-incriminating statements of the detectives. In July of 1957, the Appellate Division of the Supreme Court of New York (First Department) ruled that this evidence was insufficient in itself to sustain a revocation of a license.⁶⁸

Private wiretapping started long ago, but became a normal service offered by a number of private detectives after the famous Appelbaum case.⁶⁹ In 1949, Robert LaBorde, a private detective with a reputation for being a skilful and active wiretapper was arrested for wiretapping in a domestic relations case, in violation of the 1892 prohibition. The private detective claimed that he had obtained the permission

of the subscriber, the husband, to tap the telephone conversations of his wife over his phone. He was convicted, but his conviction was reversed by the appellate court on the ground that the right of privacy may be subordinated where the circumstances disclose the existence of a paramount right, such as that possessed by the subscriber. The court said:

When a subscriber exercises his paramount right, the one using the line subject to the implied conditions stated, is using it with the presumed understanding that his otherwise inviolate right of privacy to that extent may be invaded. Such a view preserves the paramount right of the subscriber to determine whether or not a basis exists for discipline in his business, in his house, or for action to protect his marital status.⁷⁰

Armed with this authority, private detectives solicited and conducted a lucrative wiretap business, principally in domestic relations investigations. However, their services were frequently called for by businessmen seeking to tap their own phones which were used by their employees.

Most of these private detectives did not do the physical tapping of the wires themselves. Many of them were able to locate a police officer who was willing to earn some extra money through private tapping.⁷¹ In fact, some private detectives were actually solicited by police officers for this business. A number of private detectives made contact with telephone company employees who were willing,⁷² for a fee, to provide the technical assistance necessary. Often, in a pure subscriber tap, all that was required was an extension phone, properly installed so as to give no signal to the unsuspecting parties to the conversation that another ear was listening in.

Also, there developed a group of specialists, who became

known as the "right people" to go to with a dangerous or complicated wiretap job. The two who have received the most notoriety are John G. Broady, a lawyer, and Charles Gris, a private detective.⁷³ Neither of these men had the technical background to install a wiretap, but they employed expert technicians, who for a price were willing to tackle almost any type of wiretap job. At times they worked together, and at times they worked separately. It is difficult to untangle the relationship between them.

Robert C. LaBorde, who had once been a telephone company technician, worked for both Broady and Gris, and often for himself.⁷⁴ A former crack police wiretapper, Kenneth Ryan, was available to Broady for private wiretapping, as was Bernard Spindel, who has hopped all over the country testifying before legislative committees concerning his wiretapping activities, but who, expert wiretappers claim, has not the technical ability to wiretap. Apparently, he has to pick up a "wireman" whenever he obtains a wiretap assignment. Spindel was indicted with labor leader Jimmy Hoffa on the charge of wiretapping for Hoffa in the Labor Palace in Detroit, but both were later acquitted.

Broady and Gris also employed telephone company aid frequently and with great success. It is amazing how these men were able to use telephone company employees to perform some of the most ambitious wiretapping ever done in this country. They apparently had no difficulty obtaining this help. The pay could be as low as \$25 a week or as high as \$100 to \$135 a week.⁷⁵

Despite telephone company rules prohibiting the releasing of telephone line information and despite the fact that the great majority of telephone company employees are loyal and honest persons with high ethical standards, there were still a sufficient number of employees who displayed no concern for the privacy of communications or the regulations

of the company to make the job of the private wiretapper a relatively simple one.

Listening in on telephone conversations merely for the fun of it is also customary with some telephone company employees. One former employee reports that on their lunch hour, a number of telephone men would listen in on particularly spicy conversations between New York City call girls.⁷⁶ These were the same men who were at the beck and call of private wiretappers for a price.

Besides Broady and Gris, there were other private detectives who specialized in wiretap investigations and who had police and telephone company contacts. Their names have not been revealed through the publicity of magazine articles or legislative hearings. The total number of such specialists has never been more than half a dozen, but among them, they have the boldness and ability to tap almost any telephone in the city of New York.

This top group of New York private wiretappers is better equipped than are the law-enforcement tappers. Two of their number have manufactured intricate wiretap equipment for their own use, and have even sold equipment to the police department and district attorney's office. The group finds no difficulty in purchasing wiretap supplies from the same supply houses that sell to law-enforcement agencies. In fact, one case was reported to the Savarese Joint Legislative Committee of a private detective using a police officer to purchase his equipment for him from a nationally known police wiretap equipment house and then sharing the use of the equipment with the police officer.⁷⁷

Through the 1940's and early 1950's, these front-rank wiretappers operated in a carefree manner, apparently unafraid of law-enforcement interference. Their indifference to legal prohibition was apparently justified, since there have been only a handful of successful prosecutions under

the 1892 law. Several prosecutions were reported in the newspapers between 1892 and 1922. Police and district attorneys could find no recent prosecutions except some in 1949, when LaBorde was arrested for wiretapping in the Appelbaum case,⁷⁸ when Broady was arrested for tapping the telephones of an automobile agency,⁷⁹ and when Kenneth Ryan, the police wiretapper, was arrested for tapping the telephones in New York City Hall on behalf of Clendenin Ryan.⁸⁰ All three cases ended in failure for the prosecutor. LaBorde and Broady were finally acquitted on the ground that they were tapping with the consent of the subscriber. And, as has been mentioned in the historical review, Ryan was acquitted on the ground that there had been no proof that an actual wiretap installation had been made, despite the fact that he had been caught with all his equipment in hand, blatantly working on the wires. As a result of this latter decision, a new statute was passed making it unlawful to possess wiretap equipment with the intent to wiretap.

These three efforts at prosecution, then, remained the only concrete indication to private wiretappers that law-enforcement officers were interested in enforcing the New York prohibition against private wiretapping. The prosecution failures and the general belief among private wiretappers that law-enforcement officers in New York were not really interested in prosecuting them for their activities led the wiretappers to become even more daring. They apparently were not even concerned about federal prosecution under the Federal Communications Act, since there had only been one federal arrest (in 1941) in the New York area in the history of the act.⁸¹

The bubble had to break sometime, and it did, in 1955, when the 55th Street wiretap factory attributed to John

Broady was uncovered.⁸² In the early part of 1955, John Broady, Warren B. Shannon, an electrical technician employed by Broady, and Walter Asmann and Carl R. Ruh, two employees of the telephone company, were arrested and charged with setting up a wiretapping headquarters capable of intercepting conversations over 100,000 telephones.⁸³ This headquarters was set up in December, 1953, the culmination of years of private wiretapping. The indictment and trial named only Broady as the master mind behind the 55th Street establishment, but Broady's defense counsel constantly insisted that the actual creator of this wiretap project was the private detective, Charles Gris.⁸⁴

A hitherto unpublished report deepens the mystery and adds to the uncertainty as to whether Broady alone directed the 55th Street wiretap setup. On February 7, 1955, only four days before the wiretap plant was discovered, but the discovery hushed up, a special investigator for the New York Anti-Crime Committee interviewed Bernard Spindel and submitted a report of the interview to William J. Keating, counsel for the committee.⁸⁵ Tucked in among an assortment of facts concerning private wiretapping which Spindel apparently was willing to reveal to the special investigator, was this telltale piece of information:

Mr. Spindel said that he had visited Charles Gris frequently. It was on one of these visits he met Carl Ruh, Walter Asmann and Warren Shannon, and learned that Ruh and Asmann were telephone company employees who were doing illegal wiretapping in their spare time for Gris and that Warren Shannon, who occupied an apartment in a building directly back of the telephone building where Ruh and Asmann were employed, was permitting these men to use it as a listening post. Mr. Spindel said that at the time Shannon was not involved because, he, Mr. Spindel, learned from a Richard Rutherford that Shannon had ordered Ruh to take the equip-

ment out of his apartment because he was afraid of the police discovering. . . .

Mr. Spindel said Rutherford had told him of a telephone listening post or plant operated by Charles Gris and John G. Broady, an attorney, which was located in an apartment in the vicinity of 54th Street and Third Avenue, New York City. This plant has been in operation for the past two years. Mr. Spindel said he would attempt to learn the exact location.⁸⁵

However, the proof available to the district attorney related to Broady, and was briefly as follows: ⁸⁷

Carl Ruh, who was a tester at the central telephone office at 228 East 56th Street, met Broady through Robert LaBorde. He and LaBorde went to work for Broady, providing him with pair and cable numbers and checking telephone lines for taps. Broady, who had been tapping wives' telephones for jealous husbands and husbands' telephones for jealous wives by monitoring the subscribers' phones over an off-premises extension, or by means of a tap at a terminal box close to the client's home, constantly feared detection. He asked Ruh if it were possible to make such taps from a remote place in complete safety. Ruh promptly suggested the use of a main frame man in the telephone company office, who could bridge the phone to be tapped to a spare line which would be assigned to the wiretapper. This, of course, was a wiretapper's dream, and Broady, Ruh, and the main frame man, Walter Asmann, were in business.

They needed an operating headquarters, and Shannon, Broady's electrical technician, rented an apartment on December 15, 1953, at 360 East 55th Street. A telephone company cable containing ten spares or unused pairs was connected to this apartment from the central telephone company office just around the corner. In order to make sure these unused pairs would not be assigned elsewhere, Ruh

gave the cable record clerk at the telephone office fictitious numbers to insert in the record books.

With the availability of these ten unused pairs, Broady was now in a position to tap ten telephones at any one time. All he would have to do would be to notify Asmann at the main frame at the telephone company office of the number he wanted tapped, and Asmann would connect the lugs of that telephone with the lugs of one of the unused pairs going into the 55th Street plant, a relatively simple operation at the main frame. Broady would then be able to listen in to any telephone call going over that telephone.

Automatic tape recorders were brought into the apartment and attached to each unused pair so that continuous recordings could be made of tapped telephone conversations. The operation would work with regard to any telephone exchange serviced by the telephone company office on East 56th Street. This office serviced the following exchanges: Plaza 1, 3, 4, 5, 8, and 9; Eldorado 5; Murray Hill 8; and Templeton 8 and 2. One hundred thousand subscribers' phones were involved in these exchanges. Every one of them, or rather ten of them at a time, could be tapped by Broady by the simple procedure of Asmann connecting each of the captive phones to one of the unused lines running to a waiting automatic tape recorder.

The wiretap web spun by Broady covered an exceedingly fashionable section of midtown Manhattan. Assigned to the captive telephone exchanges were large law firms; gigantic businesses and financial houses; major publishing companies; aristocratic hotels patronized by the wealthy and the famous; fashionable apartment houses; and other subscribers who daily on the telephone made decisions, plans, and compacts, the knowledge of which was priceless to competing or adversary interests.

Although Broady was retained from time to time to tap

a specific telephone in a domestic relations or a business case, with the wealth of prospects under his control, he would at times, on his own initiative, approach wealthy persons he knew were having domestic difficulties and offer his wiretapping services. He would actually sample telephone conversations to obtain incriminating bits of evidence which he could use as a selling point when he approached a prospective wife-client or husband-client. An example of this practice was the wiretap Broady was charged with putting on the telephone of stripteaser Ann Corio as a speculative venture.

At Broady's trial, it was testified that one of the most prominent users of Broady's 55th Street plant services was John Jacob Astor, who had Broady tap his home telephone to obtain evidence for a divorce from his wife. Broady not only tapped Astor's home telephone, but he also tapped the home telephone of a special investigator hired by Astor's wife. These incidents received widespread New York newspaper coverage.

According to the testimony, more than a third of Broady's wiretapping involved tapping of business establishments. The most extensive business wiretapping done by Broady was for Charles Pfizer and Company, the chemical company manufacturing, among other things, pharmaceutical products including antibiotics. The company suspected leaks of secret information by company employees and authorized Broady to tap a number of company telephones used by employees. The telephones to be checked by Broady included the home telephones of certain employees, the telephone of the general counsel of the company, and the telephone of the company's outside counsel in Delaware. For this wiretapping, and some additional security investigations, Broady received \$60,000 from the Pfizer Company.

In the course of Broady's work for the Pfizer Company,

he learned of the trouble the company was having in obtaining a patent for its product "tetracycline." Broady was told that the Bristol-Myers Company was interfering with Pfizer's effort to obtain a patent and was itself selling tetracycline to the Squibb Company. There is no evidence that Broady was asked or authorized by the Pfizer Company to tap telephones at the Squibb Company or the Bristol-Myers Company, but that is what Broady did. The telephone exchange of the Squibb Company was within the reach of the 55th Street plant, and that tap was easily installed. Ruh simply instructed Asmann to make the cross-connection.

Ruh testified that Broady also wanted him to tap a long-distance circuit that ran from the Bristol-Myers office in Radio City to their office at Syracuse, New York. Ruh told Broady that he could not do any of the actual work, since the Radio City area was serviced by another telephone office, but Broady said that he had someone else who would do that work. Later the Bristol-Myers Radio City telephone pairs were connected to a tie cable on the 600 block of Fifth Avenue and the tie cable was linked to spare pairs going to an apartment at 303 East 53rd Street which Broady rented for the purpose of monitoring Bristol-Myers calls.

According to the testimony at Broady's trial, another business user of Broady's wiretap services was the art dealer who operated the Wildenstein Galleries at 19 East 64th Street. He hired Broady to tap the telephones of two competing galleries, the art gallery of Rudolph Heinemann and the Knoedler Art Galleries. Broady charged between \$125 and \$150 a week for this service. The dealer paid Broady a total amount of \$2000, and complained that he did not hear very much of value. The Knoedler Art Galleries sued the Wildenstein Art Galleries when the wiretapping was revealed at the Broady trial and in the newspapers.

Fantastic as the operations of the 55th Street plant are,

even more so is the story behind its exposure. Activities at the 55th Street headquarters ceased on February 11, 1955, after a "raid" was made by two New York City detectives and two special agents of the New York Telephone Company. Actually, it was a visit rather than a raid. The investigators noted the wiretapping equipment and installations, made excited phone calls, but made no arrests or official complaints.⁸⁸ The only persons present in the 55th Street apartment when they arrived were Shannon and his wife. They were told by the investigators to get rid of all the equipment within twenty-four hours.⁸⁹

In any event, Broady was not concerned over the February 11 visit. Ruh testified that Broady told him not to worry about it, that there would be no trouble, since the telephone company wanted no notoriety.⁹⁰ According to Ruh, Broady also said that there was nothing on the police blotter concerning the discovery of the 55th Street plant.

What brought the investigators to the 55th Street plant in the first place remains a question. Telephone company officials claim that they had been keeping Asmann under supervision after receiving a tip from an informer, and had observed him making unauthorized cross-connections at the main frame.⁹¹ According to these officials, it was a simple matter of tracing that led the investigators to the 55th Street tap.

The existence of such an informer is now known to be a fact, since after the visit of the investigators had produced no arrests or official complaints, an informer told the entire story of the 55th Street operation to William Keating of the Anti-Crime Committee of New York, including the story of the mock raid.⁹² This all fits in with the report, mentioned earlier, of the interview Keating's special investigator had with Bernard Spindel on February 7. Was Spin-

del, then, the informer? The Savarese New York Joint Legislative Committee believes he was.⁹³

Keating released the story to the newspapers, which broke it in bold black headlines that shocked Manhattan, the state of New York, and the entire country. It was after the newspaper release that the district attorney's office issued warrants for Broady, Shannon, Ruh, and Asmann.

Keating was summoned by District Attorney Hogan before a New York City Grand Jury and ordered to disclose the name of the informer who tipped him off about the 55th Street plant.⁹⁴ Keating offered to give the Grand Jury all the information he possessed concerning the operations of the 55th Street plant, but refused to divulge the name of his informer, claiming that the Anti-Crime Committee could not exist if it did not protect the identity of its informers. Keating further pointed out that he could not see how the name of the informer was material when the wire-tapping activities at the apartment on 55th Street had been independently confirmed and established.

The Grand Jury referred Keating to a judge of the Court of General Sessions, where he again persisted in his refusal to identify his informer. He was adjudged in contempt of court and sentenced to imprisonment. He remained in jail for a few days, but was finally released without ever having told the name of his informer. Dissension within the Anti-Crime Committee of New York over the position taken by Keating finally led to the dissolution of that citizens' watchdog agency.

Shannon, Ruh, and Asmann pleaded guilty and turned state's witness against Broady.⁹⁵ Broady was convicted of the charges brought against him and sentenced to imprisonment.⁹⁶ An appeal from his conviction is currently pending.

Ruh and Asmann, who had been suspended by the telephone company, were subsequently fired.⁹⁷ Despite the com-

mon belief that vast fortunes are made by telephone company employees who aid wiretappers, Broady paid very little for the unusual help he received from Ruh and Asmann. Ruh was paid \$100 a week, and Asmann, who made the cross-connections at the main frame, was paid first \$25 and then \$35 a week.⁹⁸

Charles Gris, the detective, was also active in private wiretapping. Although he wiretapped for some major business concerns, such as a nationally known cosmetic company, his principal activity was in the area of domestic squabbles.⁹⁹ Among his clients were many New York celebrities and some of national fame. It was the same story over and over again. Either a husband wanted the phone used by his wife tapped to catch his wife cheating, or the wife wanted the phone used by her husband tapped to catch her husband cheating. Gris used Spindel, Carl Ruh, and other technicians to make the actual wiretap installation, and hired "shadow" men and women to sit in an adjoining hotel room or some other plant to monitor the tapped conversation and to watch the comings and goings of the "subject."¹⁰⁰

In his matrimonial cases, Gris's routine procedure was to have the subject watched, bugged, and wiretapped, to learn the location of the rendezvous and the time of the next meeting of the lovers. When the time was ripe, everybody involved, including most of Gris's operators, joined in on the raid, which usually caught the hunted spouse in an embarrassing and perfectly defenseless situation.

In the spring of 1955, Gris was retained by Raymond Spector, president and controlling stockholder of both the Raymond Spector advertising firm and the Hazel Bishop cosmetic company, to check his telephone lines.¹⁰¹ Because of leaks of confidential information,¹⁰² Spector suspected that the lines of his advertising agency were being tapped. This

caused a furor in his company, where vast sums of money can depend on being the first to launch a new idea.

Gris brought in Carl Ruh to do the technical investigation. Ruh examined the telephones and told Spector that his personal telephone and another telephone had been tapped and that there had also been a bug placed in Spector's telephone to act as a room microphone.

The plot thickened when, at the same time Spector was testifying to these facts before the Savarese committee, Carl Ruh testified at Broady's trial that at Broady's request, he had installed a tap on Spector's telephone.¹⁰³ There was the ridiculous situation of Ruh tapping Spector's telephone; then Ruh being hired by Gris on behalf of Spector to check Spector's lines for a wiretap; and, finally, Ruh unblushingly reporting to Spector that he had found the tap, and that it had been previously disconnected—as indeed it had been, by Ruh himself. By this maneuver, Ruh received payment for installing the wiretap in the first place and then again by reporting the existence of the tap to Spector.

This type of double-dealing has not been uncommon in the New York City area. Wiretappers paid by a wife to tap a husband's phone have often found the husband willing to pay a handsome fee to learn about it. In one bizarre case, a convict released from prison suspected his wife of squandering on a secret lover large sums of money he had left with her at the time of his imprisonment. He hired a wiretapper to tap his home telephone to record the telephone conversations held by his wife with her lover. This wiretapper was friendly with another wiretapper who had been hired by the lover to tap the telephone of the convict's wife, for reasons which are not too clear. The two wiretappers got together, pooled their efforts, and by means of one installation made duplicate copies of the telephone conversations and sold them to both parties to the controversy.¹⁰⁴

There has been an almost total lack of surveillance of private wiretapping by the New York Telephone Company.¹⁰⁵ Special agents of the telephone company have reported procedures used by them to check out complaints and to search for wiretaps. The lack of candor in these reports is illustrated when these agents state that although they receive many complaints of wiretapping, their investigations through the years have revealed little or no such activity. They claim never to have come across a New York City police officer wiretapping without an order and to have come across private wiretapping in extremely rare instances. They admit that they have discovered suspicious indications of wiretaps, but state that they usually have arrived on the scene too late to observe the deed itself.

This pattern of quieting complaints and playing down discoveries has been repeated time and time again. An example occurred in one of Gris's major domestic relations wiretap cases.¹⁰⁶ A repairman for the telephone company found an unauthorized cross-connection in a terminal box between the pairs of an assigned telephone and an unused pair. The repairman traced the wire and saw it going into a building. At this point special agents of the telephone company were dispatched to the spot and noticed that the unauthorized wire ran to the top floor of a hotel directly east of 145 West 45th Street where it disappeared into a window. When the special agents entered the hotel and knocked on the door of the room under surveillance, the repairman who had been left outside to watch the window saw a hand and arm emerge and throw the wires out the window. The special agents were then admitted to the room.

The occupant of the room told the telephone company investigators he was an operator for the Gris Detective Agency. Without searching the room for electronic equipment, the special agents merely made a call on Gris and

then dropped the whole affair. No complaint was made to the police. The report of the investigation made by the agents to the telephone company disappeared or became misplaced and was not available to New York Joint Legislative Committee investigators. The telephone company special agents have explained that the reason no report was made of this incident to the police was that they had found no actual physical wiretap attached.

Shortly after Broady's arrest, Charles Gris was arrested for wiretapping the telephone conversations of Sally Fain.¹⁰⁷ He was prosecuted by the United States Attorney for violation of the Federal Communications Act. Gris defended on the ground that his wiretapping was in strict accordance with the New York law under the decision of the Appelbaum case, which held that a subscriber could authorize the wiretapping of his own phone. Nevertheless, Gris was convicted.

The United States Court of Appeals for the Second Circuit affirmed the conviction on the ground that the New York Court decision in the Appelbaum case was not binding on the federal courts and that all the Appelbaum case could decide was that a wiretapper in Gris's position would not go to a New York prison.¹⁰⁸ According to the United States Court of Appeals, the Federal Communications Act contains no exemption in favor of subscribers and, therefore, such wiretapping is criminal under the federal law.

While review of the case before the United States Supreme Court was pending, Gris died. As we shall see, in New York the legal issue involved is now moot. In accordance with the recommendations of the New York Joint Legislative Committee, the *Appelbaum* ruling was legislatively abolished in 1957, when a law was enacted, permitting only a *party* to a telephone conversation to record the conversation.

While the sensational capers of the private wiretappers in New York City have been publicly recorded in the newspapers and in the reports of legislative committees, another form of electrical eavesdropping has been quietly going on throughout the New York City area under the direction and authorization of respectable and responsible business concerns. This eavesdropping has been internal in nature and has been used for purposes of store and plant security and checks on personnel. Its employment has become increasingly popular among business executives.

Closed-circuit television cameras have been used in some downtown department stores for the purpose of detecting shoplifters. Wiretaps have been installed on the telephones of executives, comptrollers, and purchasing agents of manufacturing and business concerns where pilfering is noticed or disloyalty suspected. Similarly, business executives have been authorizing the installation of concealed microphones in ladies' rooms and men's rooms in the business office or plant.

The rapid spread of the use of these techniques has been caused by their exceptional success in achieving the desired results. Within short periods of time, the cheat, the pilferer, or the traitor has been disclosed, and his own words and actions recorded on tape or film.

A new camera has been developed and is used by chain stores which secretly snaps a picture of every person who cashes a check in the store. The newest application of closed-circuit television in the New York City area has been made by the Eighth Avenue IND Subway line. The camera is hooked up to a receiver in the change booth, so that the station master can look over everyone who uses the gate. The camera was installed without charge by the General Precision Laboratories of Pleasantville, as a demonstration of the possibilities of television in combating crime.

Even the New York Telephone Company is eavesdropping on its employees. According to testimony before the New York Joint Legislative Committee, conversations between the employees and customers of the telephone company have been monitored by means of microphones concealed in pen sets.¹⁰⁹ Telephone company officials claim that the purpose of this eavesdropping is to check up on the kind of service that the company is giving the paying customers. These officials believe the company employees are aware of the electronic eavesdropping, but concede that the general public was never told anything about it.

Some New York City department stores have made wide use of two-way mirrors in their interview rooms and in their dressing rooms. Dressing rooms have also been equipped with peepholes, and dressing room observations have been carried out, as well, through vents already in the walls. Through peephole or vent, the investigator watches a mirror so placed as to command the entire area of the dressing room. In some instances, two-way mirrors have been placed on the rear walls of the dressing rooms. Store detectives can then cover all these rooms from an aisle at the rear of the dressing rooms.

Some New York City newspapers have been enthusiastic users of miniature recorders and microphones and transmitters. In the sensational Rosenberg spy case, a New York daily newspaper was able to be first on the street with the facts concerning the time of the execution and who died first, by secreting a miniature transmitter in the coat collar of its reporter-observer.¹¹⁰ The transmitter broadcasted over the frequency assigned to the newspaper, and by merely whispering to himself the reporter transmitted the entire news of the execution to the newspaper's staff members.

Recently the Savarese Joint Legislative Committee investigation revealed electronic spying by the New York

Transit Authority on the Motormen's Benevolent Association.¹¹¹ This occurred during the 1957 transit strike in New York. Microphones had been hidden by Transit Authority detectives in a West Side social hall, called Palm Garden, and in the Times Square Hotel, to spy on the Association.

Transit Authority detectives admitted that two microphones had been secreted over the platform of the meeting hall in the Palm Garden for eighteen months. One of the devices led by wire to the rear of the building, which adjoins a parking lot. The detectives would park alongside the building and hook up a recorder to a dangling wire.

It was at the Palm Garden that the motormen voted on December 8, 1957, to stage their eight-day strike. A Transit Authority detective spied on this meeting personally from a peephole in a closet.

The Transit Authority claimed it was engaged in police work, but the Savarese committee charged that the bugging was purely labor spying.

THE NEW YORK JOINT LEGISLATIVE COMMITTEE
AND THE
1957 AND 1958 LEGISLATION

Shortly after the 55th Street wiretap plant was publicly revealed, a joint legislative committee of the New York legislature was appointed to study the illegal interception of communications. This was to be expected, and the speed of the creation of the committee is exemplary. The committee was under the chairmanship of Assemblyman Anthony P. Savarese, Jr. The other members of the active committee were Senator Frank S. McCullough, vice chairman, Senator MacNeil Mitchell, and Senator Harry Gittleson. Throughout most of the work of the committee, the chief counsel was Howard F. Cerny, a New York attorney.

After two years of existence, the committee was continued in the 1957-58 term as the Joint Legislative Committee on Privacy of Communications and Licensure of Private Investigators.

Throughout the first two years the committee conducted its own investigations in the New York area and held hearings concerning wiretapping and bugging by law-enforcement and private agencies. As is the case with most legislative investigations, the committee met with reluctance on the part of persons possessing the true facts to reveal them. The committee explored the activities of the private detective, Charles Gris, and collected a substantial quantity of general information concerning wiretap techniques and practices.

Only formal cooperation was given the committee by law-enforcement agencies. The handful of police officers who testified before the committee told a story of wiretapping in strict accordance with the wiretap statute and police regulations, and denied any knowledge of wiretap abuses, either by police or private agencies. A similar position was taken by telephone company representatives.

The Savarese committee recognized that it was not getting the whole story, but explained that in the absence of complaint or specific leads, the task of uncovering abuse of wiretap activity by law-enforcement agencies was obviously beyond the limited means and personnel of the committee. It pointed out in its report that it had been advised by former assistant district attorney Julius Helfand that the only way to obtain this kind of information was by a full-scale Grand Jury investigation such as was conducted in Kings County from 1949 to 1954.

Following its initial investigations and hearings, the Savarese committee recommended to the New York legislature

certain legislation which was thereafter passed. The bills were aimed to wipe out the rule of the Appelbaum case which made it legal for a subscriber to have his own wire tapped; to modernize the definition of eavesdropping to include not only wiretapping, but also the use of microphones or "dictaphones" to overhear conversations to which the listener is not a party; to outlaw as evidence anything illegally overheard by eavesdropping; and to institute additional safeguards to the procedure by which court orders for wiretapping were issued to law-enforcement officers and assure the right of the legislature to inquire into the procedure followed. This last was prompted by the refusal of the New York Police Department to produce copies of applications for wiretap orders presented to New York courts.

All in all, these bills were rather lenient on law-enforcement wiretapping, mainly because of the committee's realistic appraisal of the influence exerted on the governor by organized law enforcement. The bills, passed by the legislature, were nevertheless vigorously opposed by the organized law-enforcement agencies. As a result, the governor vetoed the bills, emphasizing the objections of the law-enforcement officials.

Commenting on this law-enforcement opposition and on the governor's veto, the Savarese committee declared:

The views of law officers should be heard with respect, but they are not necessarily controlling. It is not surprising that policemen prefer not to have their eavesdropping limited by supervision of the courts. It is, indeed, proper that public prosecutors enter objections to any abridgement of the rule of illegally obtained evidence. But we are dealing here, as the governor recognizes, with fundamental rights. And, after all, the Bill of Rights was not brought into being by the King's men. It was imposed upon them by the people, as limitation of the sovereign power.¹¹²

On the recommendation of the Savarese committee, similar bills were submitted to the governor by the legislature on January 16, 1957. Again the bills met with the vigorous opposition of organized law-enforcement agencies. Law enforcement specifically opposed an exclusionary rule of evidence which would rule out illegal wiretapping evidence in criminal prosecutions. Law-enforcement agencies were also strenuously opposed to the provisions requiring court orders for bugging. They claimed eavesdropping by microphone required such prompt action on the part of law-enforcement officers that the obstacle of a court order procedure would often defeat the purpose of the investigation.

Again, on the basis of law-enforcement opposition, the governor vetoed the bill with the following veto message:

These [three measures] must be considered together. As I stated last year, they are eminently worthy in purpose but fail to overcome objections which I am constrained to recognize.

The bills before me are substantially identical with those which were passed and disapproved last year, excepting for the fact that objections raised by newspaper publishers, to one of the bills, have been met. There are other objections, the most serious of which is that if enacted into law, these measures would seriously interfere with the functioning of law enforcement agencies.

In objecting to this legislation, the Police Commissioner of the City of New York stated as follows: "I predict that the enactment of the above proposed legislation would result in a marked increase in the commission of crime. Criminals would soon discover that because of the severe limitations placed upon the police in obtaining evidence through the use of all sound reproducing devices, it would be more difficult to detect their unlawful operations. . . ."

"The efficiency of all law enforcement agencies in the State of New York would be disastrously affected, and the safety of

the lives and property of the people of the State of New York would be in jeopardy. . . ."

Disapproval of these bills is also vigorously urged by the District Attorneys of many counties, the State Division of Safety and the New York County Lawyer's Association.

In last year's message of disapproval, I stated that I cannot approve legislation which, in my opinion, will weaken the existing powers of officials who are trying to cope with racketeering, the illicit narcotic traffic and other serious crimes.

Legislation is necessary to afford protection against the unlawful practices of wiretappers. In formulating such enactments, however, we must exercise the greatest care not to weaken the efficiency of governmental agencies which labor incessantly to secure us against crime and criminals.

The bills are disapproved.

(Signed) AVERELL HARRIMAN ¹¹³

With the realization that unless there was a compromise with organized law enforcement, no legislation would finally become law, the legislative committee participated in a conference with the governor's counsel and the representatives of law-enforcement agencies, at which conference amendments to the bills which had been vetoed by the governor were agreed upon and the bills as amended finally approved. The new laws took effect July 1, 1957.¹¹⁴

They effected several important changes in the eavesdropping law in New York. The Appelbaum decision was legislatively abolished. No longer are private wiretappers entitled to tap the telephone conversations of others by the consent of the subscriber where one of the phones being used is the subscriber's phone. Under the new law, only a party to a conversation over the telephone is entitled to have that conversation recorded. Eavesdropping by microphone was added to the New York law; as in the case of wiretapping, only a party to a conversation is entitled to have the con-

versation recorded. Thus, it is illegal for someone to bug a room if he will not be a participant in the conversation taking place in that room. But it is still legal for a party to a conversation to wear a concealed pocket recorder or to bug a room in which he *will* be a participant in the conversation.

As a result of the pressure exerted by law-enforcement agencies, conversations recorded illegally, either through bugs or by wiretaps, are still admissible in criminal prosecutions. But they are now excluded from evidence in civil cases. This exclusion constitutes a basic change in New York law, which has followed the rule that illegally seized evidence is admissible and still follows that rule in the case of all other types of illegal seizure.

For the first time, the act of a police officer illegally wiretapping has been made a crime. Even under the 1942 law which required law-enforcement officers to obtain a warrant before wiretapping, there was no penal provision covering the situation where police wiretap without an order. Although the act of 1892, which did contain a penal provision, literally applied, it had always been so interpreted as not to include law-enforcement officers.

The period of time for which wiretap orders may be issued has been cut down. Illegal aid to wiretappers by telephone company employees has been made a crime.

Concerned over the failure of the telephone company to report illegal wiretapping to police agencies, the Savarese committee recommended, and the legislature adopted, a provision making it a crime for the telephone company to fail to report illegal wiretap situations which its investigations uncover. This serves the purpose of forcing telephone company cooperation with law enforcement.

The Savarese committee is now engaged in investigating the licensing procedures for private detectives and the ac-

tivities of private detectives themselves. Despite its success in producing some substantial changes in New York eavesdropping law, the committee despairingly admitted its inability at this time to compete with the powerful influence of organized law enforcement. Chairman Savarese, in the second report of the committee, observed:

Earl Warren, now Chief Justice of the United States, once remarked that he doubted that the Bill of Rights could be enacted today. Bearing in mind that the Bill of Rights is a limitation, not on private citizens but on the sovereign power (that is law enforcement officers), the experience of this Committee does not conflict with Mr. Warren's gloomy thought. We have succeeded in making it a felony for any private person to eavesdrop by secret microphone; we have not succeeded in regulating the use of such eavesdropping by law enforcement officers. This Committee still believes that use of secret microphones by law enforcement officers should be brought under the control of the courts, in accord with our successful law and experience concerning law enforcement wiretaps.¹¹⁵

Assemblyman Savarese's only consolation was the fact that the California Regan Senate Committee had fared no better in its joust with the California Peace Officers Association; in fact it had come off worse.

In 1958, the Savarese committee persisted in its efforts to have finally approved by the governor a law that would regulate law-enforcement eavesdropping by requiring law-enforcement officers to first obtain court approval for their bugging. The committee met a stone wall of resistance from law-enforcement organizations until it finally agreed to include a provision in the proposed bill which would permit police to install a concealed microphone without a court order if they were in "hot pursuit" and the delaying of their efforts for the purpose of obtaining a court order would cause them to lose their quarry. However, police would be

required to apply for an order covering the installation made in hot pursuit within twenty-four hours afterward.

This compromise legislation was passed by the legislature and approved by the governor with the following message:

The first of the above bills, Assembly Introductory Number 3812, Print Number 4619, would permit eavesdropping ("bugging") by law enforcement officers acting pursuant to court order. It deletes the blanket exception in favor of law enforcement officers from the prohibition against "bugging." The bill further provides that "divulgence of the contents of a telegraphic communication to a law enforcement officer acting lawfully and in his official capacity in the investigation, detection or prosecution of crime shall not be criminal."

The second bill referred to above, Assembly Introductory Number 3813, Print Number 4071, requires the obtaining of a court order for "bugging" by law enforcement officers, but provides that in cases of "hot pursuit," application may be made for such an order within twenty-four hours, exclusive of legal holidays, after such eavesdropping has commenced.

This bill meets the objections to previous legislation which had been vetoed by me because it did not permit law enforcement officers to use "bugging" devices during emergency action commonly known as "hot pursuit."

In its present form the bill has received the approval of law enforcement agencies and other interested groups that had opposed the previous measures.

The bill becomes effective July 1, 1958, and will outlaw the unwholesome and dangerous practice of "bugging" with proper safeguards to protect law enforcement officers engaged in the important task of ferreting out evidence of crime. This is constructive legislation.

The bills are approved.¹¹⁶

The Savarese committee was still not able to persuade the governor to approve a bill making evidence obtained by illegal eavesdropping inadmissible in criminal cases. Law-en-

forcement officers stood solidly opposed to such legislation, and the governor disapproved it saying:

Under the present law, evidence illegally obtained by eavesdropping is not admissible in any civil action, proceeding or hearing. This bill would extend the prohibition to any criminal action; in other words, such evidence would not be admissible in a criminal action.

The result of this bill is to chop away at the rule enunciated by Judge Benjamin Cardozo in the *Defore* case. Judge Cardozo decided that notwithstanding the legality or the illegality of the seizure, the evidence obtained, if relevant and material, is receivable in a criminal trial. The rule of the *Defore* case has been adhered to and respected for many years in our state.

Police officials and district attorneys are convinced that the bill would handicap and impair law enforcement. Present conditions scarcely justify such a risk.

The bill is disapproved.¹¹⁷

Of course, the effect of the new laws in New York on private and law-enforcement eavesdropping cannot be yet known. While some private detectives are now stating that private wiretapping has been totally destroyed by the new legislation, others are winking and saying that business goes on as usual, without much fear on the part of the private detectives of law-enforcement interference.

APPENDIX

DISTRICT ATTORNEY SILVER'S POLL OF NEW YORK PROSECUTORS ¹¹⁸

61 of 62 counties reported concerning wiretapping operations for the years 1950 through 1954. The counties account for population of 14,590,806. The total population of the state of New York (1950 census) is 14,830,192. Albany County alone has not reported.

The Eavesdroppers

1. Does your office employ wiretapping in the investigation or detection of crime?

Yes 32 counties population 13,087,524

No 29 counties population 1,503,282

2. How many court orders were obtained for such purpose by your office in the year?

1950 259

1951 602

1952 419

1953 505

1954 607

2392 *

* One county reported two orders but did not allocate to any of the years mentioned. Total orders—2394.

3. How many telephone numbers were covered by the above orders in each of such years?

1950 306

1951 658

1952 467

1953 586

1954 665

Total telephone
numbers 2682

4. How many orders were secured in cases described generally as involving vice, bookmaking, gambling and similar matters in each of the years?

1950 188

1951 460

1952 246

1953 374

1954 413

Total orders
re vice, etc. 1681

Two counties reported 67 orders but did not indicate in what type of cases orders were obtained.

- 4a. How many orders were secured in cases involving felonies or matters other than those described in the preceding part of this question?

1950	71
1951	144
1952	174
1953	134
1954	158

Total orders other
than gambling, etc... 681

Two counties reported 67 orders but did not indicate in what type case orders were obtained.

5. What percentage of your cases have you found wiretapping to be useful either from the point of investigation or detection in each of the categories?

Vice—Of the 32 counties employing wiretapping, 24 counties reported 100% effectiveness.

(Rockland) 1 county reported 75% effectiveness

(Richmond) 1 county reported 70% effectiveness (7 orders in 5 years)

(Genesee) 1 county reported 50% effectiveness (4 orders in 5 years)

(Suffolk) 1 county reported "high percentage" effect

4 counties did not answer

Felonies—Of the 32 counties employing wiretapping, 10 counties reported 100% effectiveness

(Richmond) 1 county reported 70% effectiveness

(Suffolk) 1 county reported "high percentage"

20 counties did not answer; 18 of these 20 had no occasion to use wiretapping in matters other than vice, gambling, etc.

The Eavesdroppers

6. How many complaints has your office received concerning wiretapping operations during each of the years mentioned involving:

- (a) Legal taps 1 complaint 1954
- (b) Illegal taps 1 complaint 1953
- (c) Abuse of information None 1954

7. In making wiretap installations, is this service performed by:

- (a) Members of your organization:

Of the 32 counties employing wiretapping

- 1 D.A. makes installations only by members of his office;

- 6 D.A.'s use members of their offices and other law enforcement agencies to make installations *

- (b) Members of other law enforcement organizations and if so specify:

- 17 D.A.'s use only members of other law enforcement agencies

- 2 D.A.'s did not answer

- (c) Private individuals:

- 1 D.A. used private individual

- 2 D.A.'s used telephone company employees

*Of the 23 D.A.'s using other law enforcement agencies to install taps alone and/or with the members of the D.A.'s staff:

- 5 D.A.'s used New York City police;

- 4 D.A.'s used local police;

- 6 D.A.'s used local and state police;

- 8 D.A.'s used state police

8. The types of equipment used and where it was purchased or leased.

Those reporting indicated that equipment was owned by their offices or by other law enforcement agencies.

9. Has any information come to your attention during the past five years indicating activity in your area of illegal wiretappers?

Only two of the 61 reporting D.A.'s indicated that any information had come to their attention during the past five years indicating activity in their areas of illegal wiretapping. The district attorneys reporting such information are the district attorney of New York County—one in 1953 and one in 1954; and the district attorney of Ontario County, one in 1955.

10. Will you state whether in your opinion wiretapping is of value to your office in the investigation or detection of crime? If so, in connection with what types of crime? It would be appreciated if you would briefly give your reasons:

Allegany County

Up to this point there has been no case investigation where wiretapping was essential or necessary in obtaining evidence for prosecution. If it were necessary for the proper prosecution of any violation I would use it.

Bronx County

Proper wiretapping is of the utmost value to this office in the investigation and the detection of all types of crimes.

Broome County

The use of intercepted telephone communications was started in this office in 1948 and provided the sole reliable means of detecting a conspiracy between police and gamblers, which ultimately resulted in convictions. The initial investigations of the police-gambler associations arose out of unsolved homicides and disappearances of men in the gambling profession in 1947 and 1948, requiring some means of detection beyond ordinary police surveillance.

In our opinion, it would be impossible in all practical respects, to maintain adequate police control in this community over the professional criminal group and problems ensuing therefrom, without the use of intercepted telephone communications.

Cattaraugus County

In this rural community we have had no request to use wire-tapping in investigation and detection of crimes and wiretapping has not been used either by this organization or any other to my knowledge.

Cayuga County

Yes. I have found the same most useful in the detection of bookmaking and gambling. Also, the knowledge of those engaged in such practice of the fact that we are familiar with the knowledge necessary to conduct the same, assists in discouraging such practice in the City of Auburn, New York.

Chenango County

No comment.

Columbia County

In 1950, my office and the State Police cooperated in the investigation of crime in the City of Hudson relative to prostitution and numbers.

During the course of this investigation as a basis of obtaining search warrants the state police secured certain orders for tapping telephones in the city and in some of the places in the county. I have no personal knowledge of how many orders were obtained but do know that certain of the evidence secured by the State Police was used in making applications for search warrants. As a result of the later use of the search warrants, several arrests and convictions ensued. However, the wiretap evidence was not used in the prosecution of the cases.

In my opinion, the use of wiretap facilities can be of material assistance at times but to date it has been unnecessary for my office to use it.

Delaware County

Recourse to wiretapping has not been had by this office.

Erie County

Yes—as can be seen from the foregoing, our use of wiretap information in evidence is depended upon, to a very large extent in the prosecution of organized gambling, as the only means by which evidence of such crimes is obtainable and without wiretap evidence prosecution of these cases would be impossible. This would result in syndicate gambling having a field day and over-running the community.

Franklin County

No connection on which to base an opinion.

Fulton County

It has been our experience that in this type of case, wiretapping is absolutely essential to the obtaining of evidence on which successful prosecution can be based.

Genesee County

Yes—bookmaking. It has resulted in scaring off bookmakers. However, it did not result in any arrests. Some years before the years mentioned by you, bookmaking was stopped by use of a legal tap with a conviction following.

Greene County

Wiretapping has been used to a very small extent in the county. However, I do believe that it serves a useful purpose and I would like to continue to have the privilege to use it when I see fit, pursuant, of course, to proper court order.

Herkimer County

The office of D.A. in Herkimer County does not have an investigation department. Accordingly we must rely upon law enforcement agencies throughout the county. Generally speaking, there have been no crimes brought to the attention of the D.A. that necessitated wiretapping. Those that might have been investigated through wiretapping were handled through other

investigative means with desired results. We do not have the crime problems in Herkimer County such as exist in the larger Metropolitan areas. It is my opinion that wiretapping is essential for crime investigation and detection. It should not be limited to only certain types of crime, as it might prove useful in any crime situation.

Jefferson County

To date I have no reason to think that the benefits of wiretapping to this office would be anything other than negligible. The types of crime in this county of which we are cognizant are not, in the main, the types in which wiretapping would serve any useful purpose.

Madison County

Have never had occasion to use.

Montgomery County

No comment.

Oneida County

In a few instances in which wiretapping has been used by this office, it has been demonstrated to be of value, not only in the investigations of the particular crime involved, but in the detection of other possible or potential crimes.

It has been most successful in abortion cases.

Onondaga County

I am advised by the Syracuse Police Department that wiretapping is of considerable assistance to them in the detection of crime, especially in the case of bookmaking, vice and gambling crimes. These types of crimes are carried on usually behind locked doors, and it is very difficult for the police to obtain sufficient information to sustain a conviction unless they employ wiretapping. I believe that the use of wiretapping by the police is beneficial in the detection of crime.

Orleans County

Unable to render an opinion at this time.

Oswego County

No comment.

Otsego County

No comment.

Queens County

Wiretapping has been of considerable value to our office in the investigation and detection of crime. We find that it is particularly helpful in crimes such as abortion, where it is difficult to secure evidence without the assistance of wiretapping information. We also find that it is instrumental in securing leads, names and locations of individuals whose apprehension is important in the conduct of our office.

Rensselaer County

We found wiretapping to be beneficial in the investigation and detection of crimes involving gambling. Without wiretapping, it is most difficult to obtain evidence regarding the violation of gambling laws. In addition, we feel that wiretapping has a deterring effect on those who have any intention of violating such laws. The fact that the law enforcement authorities may legally tap creates a fear in the minds of those individuals who would violate the law and thus cuts down on the operation of such individuals because most large scale book-making and gambling operations necessitate the use of the telephone.

Richmond County

In my opinion wiretapping is of value in the investigation and detection of crime. This is particularly so in organized groups engaged in conspiracies to commit criminal acts.

St. Lawrence County

I am in favor of the law being retained, as situations may arise at any time when wiretapping may be of inestimable value, and the fact that I have not had to take advantage of this law does not mean that I will not have to at some time in the future. Certainly there has been no abuse of this law in my county.

Saratoga County

A special investigation was conducted in this county by a Special Attorney General for the past three and one half years. How many taps, if any, they obtained and of what value, I am not in a position to state. However, in the three instances where used by me in 1953, two resulted in conviction, and the information obtained was of extreme value. Both involved bookmaking. The other instance in 1953 involved some characters believed to be getting ready to set up a gambling enterprise, but they were scared off by surveillance. Information received by tap was of extreme importance in aiding surveillance.

I consider the availability to me of wiretapping in accordance with the code to be of extreme importance. The mere fact that I have the right to obtain an order to my mind acts as a deterrent. I believe it would be tying the hands of law enforcement officers to take this right away from them. I believe that persons are protected in their privacy by the requirements necessary to obtain an order. In my experience, that right has not been abused.

Schenectady County

Without wiretapping, it would be most difficult if not impossible, to get evidence and make arrests for violations of gambling and other forms of vice. Although I have not found an occasion to use wiretapping on felony investigations, I am certain occasions will arise when it will be extremely helpful. Legal wiretapping is a strong arm of the law enforcing agencies. It should, however, be used only with careful scrutiny of the head of each law enforcing agency in cooperation with the prosecutor's office.

Schoharie County

It is my opinion that legal wiretapping is highly desirable particularly in the prosecution of bookmaking or of the gambling syndicates. I think legal wiretapping should be permitted as long as the proper safeguards are available which I believe are provided for under the present law. I have contemplated an application for order in several cases but was able to dispose of the matters without the necessity of getting information in this manner. There is as much a distinction between legal wiretapping and illegal wiretapping as there is between searching a home with a search warrant and unlawful entry. If this distinction is kept in mind by your committee, I feel it will be helpful in any reasoning done in the course of proper restricted legislation.

Schuyler County

No comment.

Steuben County

No comment.

Suffolk County

Wiretapping has been of great value to this office in the investigation of criminal activities. It has been used primarily in connection with vice, illegal bookmaking, gambling and narcotics investigations; and to a lesser degree in cases of arson, extortion and abortion, larceny, burglary, robbery and homicide.

Particularly in cases of vice, gambling and bookmaking, it has been of extreme importance in the location of sites where telephones are used in the operation. Interception of conversations as to rendezvous between participants in criminal activity such as robberies and burglaries have been helpful in either prevention of the crime or the apprehension of the criminal. On several occasions we have been able to obtain information and evidence leading to the arrest and conviction for the crimes of

abortion and extortion. In one instance an interception of a conversation resulted in the prevention of a bank robbery.

In conclusion, this office feels that continued use of wiretapping has become an almost integral part of the investigation of crime in this county.

Sullivan County

We have found it very valuable in exposing gambling operators.

Tioga County

Unable to answer for the reason that this office has had no experience with wiretapping.

Tompkins County

No comment.

Ulster County

Yes. Vice. This is about the only way in which evidence can be secured in this type of crime.

Warren County

No comment.

Washington County

No comment.

Wayne County

Having been in office only since December of 1954 I have had no experience with wiretap installations. I certainly do believe that it would be of value in particular cases. I recall an attempted extortion case in which it would have been advantageous to operate with a wiretap. However, being a country D.A., such apparatus is not immediately available, and we usually try to accomplish the same thing without it.

Yates County

No comment.

NUMBER OF ORDERS, WIRES, ARRESTS, CONVICTIONS,
AND CASES PENDING IN DISTRICT ATTORNEY'S OFFICE,
KINGS COUNTY, FOR THE YEARS INDICATED ¹¹⁹

General

(Not including rackets bureau)

Year	Orders	Wires	Ar- rests	Convic- tions	Pend- ing	Cases in which orders were procured	No.
						Type	
1951	13	18	16	13	..	Homicide	18
1952	8	12	5	5	..	Grand larceny and receiving	9
1953	5	6	11	11	..	Abortion	12
1954	21	31	12	2	9	Robbery	6
1955	1	1	..	..	..	Gambling	3
(to Mar. 10)	—	—	—	—	—		
Total	48	68	44	31	9	Total Orders	48

Rackets Bureau

1950	47	56	45	40	..	Gambling, corruption, and prostitution	162
1951	54	67	28	23	..	Grand larceny and receiving	62
1952	46	56	34	51	..	Abortion	1
1953	28	35	11	9	..	Perjury	1
1954	39	65	46	25	17	Narcotics	1
1955	13	15	15	0	11		
(to Mar. 10)	—	—	—	—	—		
Total	227	294	195	148	28	Total Orders	227

Total for General and Rackets Bureau

(For years 1951 through 1954)

1951	67	85	44	36	..
1952	54	68	59	56	..
1953	33	41	22	20	..
1954	60	96	58	27	34
Total	214	290	183	139	34

The combined figures for 1951 through 1954 indicate:

1. Average number of orders per year—53½.
2. Average number of wires per year—72½.
3. Average for four years of arrests to orders (per cent)—85.
4. Average for four years of convictions and pending cases to orders (per cent)—80.

OVER-ALL PROSECUTING ACTIVITY AND THE USE OF
COURT-ORDERED LEGAL WIRETAPPING
THE OFFICE OF THE DISTRICT ATTORNEY, NEW YORK
COUNTY, 1942-54

Criminal Matters Disposed Of

Year	General Sessions	Special Sessions	Magis- trate's Court (gam- bling)	Com- plaints	Total	Number of investigations where wiretaps installed
1954	3,982	13,881	1,758	10,259	29,880	33
1953	3,632	12,292	1,967	11,623	29,514	25
1952	3,428	11,063	1,606	11,796	27,893	28
1951	3,151	13,292	2,298	11,611	30,352	20
1950	2,685	12,693	2,986	11,147	29,511	25
1949	2,692	11,060	3,436	10,684	27,872	14
1948	2,911	10,608	2,918	10,593	27,030	32
1947	3,585	7,401	5,564	11,123	27,673	24
1946	3,527	7,297	5,571	10,763	27,158	41
1945	2,944	4,745	3	10,000 ⁴	17,689	28
1944	2,791	4,198	3	10,000 ⁴	16,989	19
1943	2,575	3,972	3	10,000 ⁴	16,547	25
1942	3,253	5,527	3	10,000 ⁴	18,780	22
Total	41,156	118,029	28,104	140,599	326,888	336

OVER-ALL PROSECUTING ACTIVITY AND THE USE OF
COURT-ORDERED LEGAL WIRETAPPING
THE OFFICE OF THE DISTRICT ATTORNEY, NEW YORK
COUNTY, 1942-54 (*continued*)

Number of wiretap orders in- cluding renewals	Number of wiretap orders per 1000 disposi- tions	Number of arrests resulting	Convic- tions	Acquit- tals and dis- charges	Other- wise dis- posed of	Cases pend- ing
97	3.2	92	40	8	1 ¹	43
100	3.4	36	11	5	1 ¹	19
102	3.6	41	26	7	5 ¹	3
81	2.7	57	55	2	0	
74	2.5	51	39	4	1 ¹ 1 ²	6
51	1.8	49	32	16	0	1
79	2.9	25	22	1	0	2
45	1.6	14	10	4	0	0
60	2.2	26	26	0	0	0
52	2.9	20	19	0	1 ²	0
48	2.8	17	15	2	0	0
51	3.1	16	13	3	0	0
76	4.0	23	19	4	0	0
<hr/> 916 ⁵	<hr/> 2.8	<hr/> 467	<hr/> 327	<hr/> 56	<hr/> 10	<hr/> 74

¹ Turned over to other authorities. ² Abated by death. ³ No figures avail-
able. ⁴ Estimate. ⁵ Average per year, 70.5.

NEW ORLEANS

BATON ROUGE

Louisiana's law provides the broadest authorization for law-enforcement wiretapping existing in this country. In 1928, the year the Supreme Court of the United States handed down the *Olmstead* decision, and a time when wiretapping was being widely used by law-enforcement agencies against bootleggers, Louisiana's legislature enacted a prohibition against private wiretapping, making such wiretapping a misdemeanor punishable by a maximum fine of \$300, and a maximum imprisonment of three months.¹ The statute, however, contained the following provision:

This section shall not be construed to prevent officers of the law, while in the actual discharge of their duties, from tapping in on wires or cables for the purpose of obtaining information to detect crime.

Thus, since 1928, Louisiana law-enforcement officers have been directly authorized by state law to use wiretapping as a police weapon. No control is imposed by the statute over police wiretapping and no consent is required by a court or the attorney general or district attorney. Any law-enforcement officer in the state, at his whim, or in the exercise of sound discretion, may install a wiretap for the "purpose of obtaining information to detect crime."

One might assume that with such legislative permission, law-enforcement officers in New Orleans, the largest city in Louisiana, would be freely using wiretapping in the course of carrying out their law-enforcement duties. This should be especially true in light of the known practices in states where law-enforcement officers are prohibited from wiretapping and in states where they have a qualified authorization.

If police are wiretapping in New Orleans, some of New Orleans' best-informed citizens are totally unaware of it. As

a matter of fact, it is generally believed in New Orleans that police do not wiretap. The editor of a leading New Orleans newspaper, a criminal law professor at a law school in Louisiana, the district attorney, and other prominent citizens honestly expressed their opinion that New Orleans police do not wiretap.² Leading criminal defense lawyers and representatives of a special committee to investigate crime and corruption in New Orleans say that New Orleans police wiretap, but not for law-enforcement purposes.³

What do New Orleans police say themselves? It is not clear. In an interview with the top-ranking police officers in New Orleans, I was told that the police do and do not wiretap. The official position is that the police do not wiretap. However, police state that wiretapping is a useful police weapon and should be employed. Officially, police are unable to explain why New Orleans police officers have not engaged in wiretapping. Various explanations were given by the commanding officers and then retracted. For instance, the police superintendent stated that police could not get cooperation from the Bell Telephone Company in New Orleans. This was contradicted by another ranking officer, and then all the commanding officers, including the superintendent, admitted that they could get any cooperation they wanted from the telephone company. The superintendent then stated that although the Louisiana law permitted wiretapping, New Orleans police were not certain that the Federal Communications Act would not be applied to them and they did not want to be prosecuted by federal authorities. It was soon admitted that this explanation was not seriously offered, since New Orleans police do not actually believe that federal law-enforcement officers would enforce the Federal Communications Act against them. Finally a high-ranking police officer, who serves as advisor to the superintendent, ended the discussion by saying that the po-

lice didn't believe that wiretapping was necessary in New Orleans, since they didn't have a serious vice or racket situation such as exists in New York.

Throughout this interview, the police commanding officers showed a thorough knowledge of wiretapping equipment and wiretapping installations. The officer in charge of vice investigations made it very clear that he had excellent cooperation from telephone company personnel. Despite a general denial of wiretapping by some others, this police officer expressed a preference for the "good old home-made type of wiretapping equipment." He said, "I have men in my squad who can build everything and they're building everything." Finally, the vice officer stated that his men carried wiretap equipment on every job. He said they used it principally to check their work, that is, to learn if illegal activity was in fact occurring in a place under surveillance.

Other sources stated that New Orleans police rarely engage in wiretapping for law-enforcement purposes.⁴ From time to time the narcotics squad has used wiretapping in investigations, and from time to time the vice squad has also used it in checks on call girls. But there has been a decided disinclination on the part of the police department to employ wiretapping for general law enforcement, especially in the areas of vice and organized gambling.

There are, however, indications that considerably more wiretapping is being done by New Orleans police than would appear, but the police prefer to disclaim all such activity.⁵ What at first seemed incongruous in a city where police wiretapping is lawful became understandable when it was revealed that the police are operating under strict instructions from the telephone company.⁶ In return for the considerable help the telephone company gives the police, which makes police wiretapping easy, the telephone company expects that the police will use the wiretaps only as

leads and not for evidence in court and, above all, the police must not reveal that they are wiretapping. This secrecy, the company feels, is necessary to preserve public confidence in the telephone.

A good bit of the wiretapping done by the police is with the aid of telephone company employees, who more often than not cooperate in the belief that the police are wiretapping for law-enforcement purposes and that under the Louisiana statute, it is lawful for telephone company employees to help them.⁷

The police of New Orleans do not possess much wiretapping equipment, nor do they need it. Any telephone they wish to place under surveillance can be put on either one of two major telephone company test boards and monitored at the test board station by telephone company employees.⁸ Even a tape recording of a conversation will be supplied to the police officer by the monitoring employee.⁹ One police officer of command rank admitted that when one of his men installs a wiretap on a telephone in the field, he feels perfectly safe that the wiretap will not be disturbed by the telephone company. In fact, he says, if telephone company employees receive a complaint from a subscriber of a suspected tap on his telephone, they warn the police that a complaint has been made.

During an investigation in 1954 of organized crime and the police department by a special local government committee, members of the police department wiretapped the telephone of the chief investigator for the committee.¹⁰ When this investigator complained to a telephone company employee that he suspected a wiretap, he was told that a check of the line showed no unauthorized connection.

Eventually, the investigator was able to persuade a telephone company inspector to come out and trace the line with him. When they left his apartment, his telephone was

in good working condition. When they reached the basement terminal box, they observed that the pair of wires coming from his telephone had been pulled off the terminal lugs, rendering his telephone inoperative. An additional loose pair of wires were also found in the terminal box, indicating that they had recently been connected and had been pulled off.

The disconnection had to occur in the time between the telephone company inspector and the investigator's leaving the apartment and their arrival in the basement.

The same crime committee investigator had been receiving harassing calls in the early mornings from an unidentified man. The investigator engaged the caller in conversation from time to time, and after a few such occasions a peculiar friendship developed between the two. The early morning caller admitted that he was a police officer assigned to monitor a wiretap on the investigator's telephone. The friendship had developed to such a point by this time that the tapping police officer agreed to become an informer for the investigator.¹¹

The effectiveness of New Orleans police wiretapping cannot be evaluated, because wiretapping is not credited officially with the solution of crime. Actually, the performance of the New Orleans Police Department has been reported to be exceptionally poor in the area where wiretapping is most employed by other police departments—organized racketeering.

The New Orleans crime investigating committee charged that the New Orleans Police Department did not do a good job of law enforcement against organized crime, but, on the contrary, was permeated with corruption and was protecting organized criminal activity, rather than serving as a force against it.¹²

In the 1954 report of this Special Citizens' Investigating Committee of the Commission Council of New Orleans, representative conclusions of the committee were stated as follows:

Bars and Clubs

. . . It was the sustained and unconcealed indifference to the laws, relatively unhampered by the police, which led to a basic conclusion; it is our considered opinion that the largest part of the law enforcement problem is centered around and within the New Orleans bars and clubs. It was in connection with these public gathering places that much of the evidence was developed, which clearly indicates that the legal licenses for establishments of this type too frequently are a disguise, seldom used with any genuine efforts of concealment, for maintaining handbooks, poker games (often of the "hotsy" variety), and prostitution. And that these illegally operated establishments *exist with the New Orleans police alternately encouraging and harassing them while sharing in their profits.* [Emphasis in original]

. . . *Almost all of the bars or clubs currently investigated were found to be involved in some law violation, frequently with evidence that the illegality was known by, or had been reported, to the police. The combination of law violation and police awareness thereof, had existed in many cases, for at least several years.* [Emphasis in original]

Efforts to prosecute law violators are frustrated by the joint perjury of policemen and bar personnel.

Special privileges become the order of the day. Most important, with police on the wrong side, the community has no agency available to protect it from these illicit influences. And the law violators involved, having no fear of the police, pursue their inroads into community security and decency with aggressiveness.

The committee's investigators found evidence which is equally accessible to the New Orleans police, if they properly

were performing their duty. Bars and clubs which are crime breeding, crime committing, destroyers of the character of our youth and of the reputation of a community should not be allowed to exist. The laws forbid them.

Gambling-lottery

Our investigation reveals a day-to-day relationship between the "business" of the lottery operators and employed vendors, and the machinery of law enforcement.

. . . The identities of the owners and/or partners in major lottery companies are known. They are included in the details of lottery-gambling of the staff investigative résumés, and have been available to the New Orleans police department.

Police arrest data, the records of the district attorney and of the courts, reflect that the employed vendors of the lottery company owners are being arrested by the New Orleans police, only to the extent necessary to meet the varying pressures of public demand and interest. The testimony of police against their prisoners is of the nature which frequently justifies suspicion of perjury.

Based on information obtained we are of the opinion that the vendors are surrounded by an effective machinery of collusion between policemen, lawyers, and the lottery company owners, by which the vendor, upon arrest, is returned to his duties of accepting gambling bets with a minimum loss of time. . . .

The committee investigators were repeatedly successful in securing evidence of active violations of the lottery gambling laws within the city of New Orleans. Bets were placed and physical evidence thereof secured. This occurred despite alleged orders from the police to the lottery vendors that their activities had to be subdued and cautious while the "heat" engendered by the work of this committee remained.

An analysis was made of police arrests of lottery vendors, and the disposition of their cases in the courts. The frequency with which they were discharged for lack of evidence, in contrast to the comparative ease of procurement of evidence found

by the committee investigators, in another exhibit supporting the allegations of an organized payment of graft to the police by lottery company owners. . . .

The laws, once again, in the case of lottery-gambling provide the basis for necessary control of this type of offense. The committee emphasized that the problem exists only because of the absence of proper police administration and law enforcement.

Gambling-handbook

Lottery gambling, recently estimated to be diverting fifteen million dollars a year from normal and legitimate commerce in New Orleans, depends upon large numbers of company employees to reach larger numbers of small betters in order to grow and prosper. Handbook gambling, feeding upon larger individual investments, does not require many unlawfully employed persons to be a major drain upon the community economy. From information and evidence gathered by the committee's staff it was clear that all during the committee's existence handbooks continued to operate but with little interference by New Orleans police, although with greater caution and secretiveness. But not so cautiously as to prevent accessibility to their "customers" to committee investigators and to the police.

The Louisiana State Police, with only a small development of men assigned to the New Orleans area, has had notable success in finding and raiding handbooks. The question naturally arises as to the real reason for this contrast in law enforcement. It has been repeatedly called to the attention of this committee and its staff that police officers and officials were not only friendly with handbook operators and owners, but frequenters of their unlawful establishments. . . .

. . . The facts are clear that handbook gambling continues to exist in violation of the law, and these facts in our opinion further show that the operators are allied with, rather than opposed by law enforcement officers.

The staff investigative résumé pertaining to alleged police bribery and extortion sets forth the manner in which police

are compensated, on an organized and sustained basis, for the cooperation which permits the handbook operator profitably to remain in business. The laws against handbook gambling are reasonably adequate. The evidence against violators of these laws is reasonably available. The committee emphasizes that the problem exists only because of the absence of proper police administration and law enforcement.¹³

And so on—

In the committee's conclusions, constant mention is made of the work of the committee investigators and the availability of facts to these investigators. The investigators state that wiretapping was not used in the course of the investigation, although small pocket recorders and concealed microphones were frequently used.

Mention is also made of the successful forays against organized gamblers by representatives of the state police. This successful police action was contrasted by the committee with the poor performance of the New Orleans police. The state police made extensive use of wiretapping in their investigations of the gamblers and also used pocket recorders and concealed microphones.¹⁴

It seems clear from the committee's report, however, that sufficient information concerning gambling and the participants in organized rackets was available to the committee's investigators without the use of wiretapping to permit efficient prosecution and control of these crimes.

The district attorney of the Parish of Orleans (as of the time of this study in 1957), a former law professor, was opposed to wiretapping on grounds of principle. His office is not set up for crime investigation, but is essentially an office for prosecuting criminal cases in court. Investigators assigned to the district attorney's office do not possess wiretapping equipment and do not engage in wiretapping. The

district attorney stated that he was unaware of police wiretapping in New Orleans. He believed that New Orleans police lacked the know-how to use electronic equipment and that New Orleans was still a backward town in this respect.¹⁵

The capital city of Louisiana, Baton Rouge, presents a marked contrast to New Orleans in law-enforcement attitudes and techniques. The police and district attorney's office use wiretapping for law-enforcement purposes without hesitation whenever the occasion arises.¹⁶ These law-enforcement offices possess little equipment for wiretapping, since most of the monitoring of telephone conversations for law-enforcement officers is done at the telephone company by employees of the telephone company.¹⁷ This is done in the belief that the Louisiana law authorizing police wiretapping equally authorizes telephone company law-enforcement cooperation.

Although evidence obtained by wiretapping is admissible in Louisiana courts, law-enforcement agencies in Baton Rouge wiretap only as an aid to investigation and never for the purpose of using what they get in evidence. This law-enforcement policy was established principally at the insistence of the telephone company.¹⁸

Law-enforcement agencies have been highly successful in keeping the public in the dark, since a spot poll of prominent citizens in Baton Rouge indicated that it is generally believed by the people in the community that law-enforcement officers do not engage in wiretapping in Baton Rouge.

The attorney general's office of Louisiana likewise engages in wiretapping with the aid of the telephone company. It is the attorney general's position that the telephone company is permitted to monitor conversations over telephones when requested to do so by officers of the law under the authority

of the Louisiana statute giving officers of the law the right to wiretap.¹⁹

Admitting these practices and basing their actions on the provisions of the Louisiana wiretap law, law-enforcement officers in Baton Rouge, as well as the attorney general's office, principally stress the use of wiretapping in apprehending mentally disturbed men who have annoyed Louisiana women by calling them on the telephone and using lewd and profane language.

For a period of years legal counsel to the state police has supposedly hesitated to give an "all clear" sign for state police wiretapping, because of the ever-present threat of the Federal Communications Act. Nevertheless, the state police have made extensive use of wiretapping and are building up a central storehouse of equipment.²⁰ It is generally believed by local law-enforcement agencies that their own budgets do not permit them to purchase much equipment. However, the state police, with a substantial budget for equipment, can fully equip themselves and cooperate with other law-enforcement offices either by lending the equipment or making installations for them. This program of cooperation is presently being worked out.

Although the present superintendent of state police claims that he has not yet been authorized by the counsel for the state police to wiretap, he says that whenever state police need any information going over telephone lines, they get cooperation from the telephone company in the form of a monitoring service. The superintendent is at present purchasing a quantity of electronic devices for eavesdropping purposes. Most of these are transmitters and microphones.

The state police recall that one of the recent occasions on which they used wiretapping involved a homicide investigation. Through the cooperation of the telephone company, the calls over a certain telephone were monitored and

information was received concerning the whereabouts of the suspect.

Perhaps the most effective use of wiretapping by state police occurred in 1954, when Francis Grevemberg was superintendent of state police.²¹ Colonel Grevemberg had been a plain citizen without police experience when he was appointed superintendent by the governor. Believing that his duty was to enforce the law, Colonel Grevemberg embarked on a vigorous campaign to shut down the illegal gambling houses. In the beginning, leading gamblers believed that Grevemberg could be bought off, and they made approaches to him. Grevemberg used wiretapping and concealed microphones to record some of these approaches and produced the recordings later for the purpose of prosecution.²² It was under Grevemberg's supervision that the state police conducted effective raids in the city of New Orleans and prompted the New Orleans Police Department to make a token show of action on their own part.

As part of his strategy in collecting evidence against gamblers and proof of their efforts to bribe him, Colonel Grevemberg and his chief deputy, Major Edgecombe, permitted themselves to be contacted by certain leading gamblers and recorded their conversations. Then a meeting would be arranged, usually in a trailer owned by Edgecombe, where the gambler would be encouraged to offer his proposition. The entire conversation was recorded on magnetic tape. Excerpts from the transcript of one of these recordings follow:

Vuci: Well, do you think it's all right to lighten it up a little bit, Colonel?

Grevemberg: You guys are talking, you tell me. I mean, I don't know, it's very obvious. . . .

Vuci: What you need is a good manager, Colonel.

Grevemberg: I need a good manager, that's right.

- Vuci: You're looking at one. I know them all. I know them all. I'll tell you about it. What you need is a good manager.
- Grevemberg: I don't know what the score is, but I do know that certain of my boys down in New Orleans are making deals on the side; they know where the hell I am, they keep track of me.
- Vuci: Well, that's what I'm trying to tell you. Why are you letting them people make that money when you ought to be making it?
- Grevemberg: (Laughter) Well, that's what I'm telling you, you're the man dealing. You tell me what your story is. That's what I'd like to know.
- Vuci: You say so and I'll show you how to make some money. That's all I can tell you and you'll never get no halo—
- Grevemberg: As I say, I'm scared to death. . . .
- Grevemberg: Yes. All right, say you open a place in West Baton Rouge. It couldn't be too big, then all the legislators would see it.
- Vuci: Yeh, that's right. That's true.
- Grevemberg: All right, then all the books—a bookie joint maybe. I don't know what—you know—if you don't do it too—
- Vuci: Not too wide open, no. Then how have you been working those boys that you've got working for you. Have you told them anytime you see something report it to me or—
- Grevemberg: Say, I can handle them. I can just change it anyway I want it. All I've got to say is such and such a thing. . . .
- Grevemberg: Well, what do you have in mind? I mean, I don't know anything about it, Frank. I've never

made a deal with anybody, down in New Orleans, anywhere, never have, see?

Vuci: Well, you know, the reason I'm over there is, you know, I don't know how it's going to come out or what kind, if I get open; it might make some money. Whatever you say is right.

Grevemberg: Yes, but I don't know a damn thing about it. I don't know anything about gambling, to be frank with you. I mean—I don't know the odds. I don't know what kind of thing you get on the house, bookie joint or gambling game or dice game.

Vuci: Bookie joint, you usually get about 20 per cent. You have to give the government 10 per cent of it. Of course, you get lucky, you make more, but—

Grevemberg: You take 20, and you've got to give them what?

Vuci: Well, the government 10 per cent.

Grevemberg: You've got to give them 10 of the 20?

Vuci: No, you give the government 10 per cent of the net take.

Grevemberg: Oh.

Vuci: You see? When you wind up with about 20 per cent of the profits, that's what you wind up with.

Grevemberg: How do you take care of the payoff? I mean as far as the government is concerned. You can't—

Vuci: Show them what I want. How can they prove it?

Grevemberg: Oh, you can't put incidental expenses?

Vuci: No, I don't put nothing down. The payoff don't ever show because whoever who does that has to be careful how he spends it, that's all. (Laughter) That's the only difference.

- Grevemberg: It wouldn't be anything big, couldn't do it, you know; it would have to be not obvious, you know.
- Vuci: No. Open in a back room or something. . . .
- Vuci: What can I do for you?
- Grevemberg: I don't know, I don't know anything about it. You tell me. You tell me what you've got because I don't know how much you can pay or what. See.
- Vuci: Well, I'll tell you what I'm going to do.
- Grevemberg: And I've got to see whether it's worth my while, because I'm not sticking my neck out for nothing—you realize this—as a matter of fact, I'm scared shivers, if you want to know the truth about it; to even talk about it.
- Vuci: Well, I don't think you have anything to worry about.
- Grevemberg: It's got to be in such a way that I'm not connected with it. I can control it if you're worried just about us.
- Vuci: That's all I'm worried about.
- Grevemberg: Don't worry in that case, if it's worth while.
- Vuci: I won't worry. I'm going to tell you. Would two and a half a week be all right for a while? And if I make any money, you got my word it'll be more.
- Grevemberg: Two hundred and fifty dollars a week, that would be \$1000 a month, ha?
- Vuci: Yes.
- Grevemberg: That's a hell of a chance to take for \$1000 a month.
- Vuci: I know that, too.
- Grevemberg: I mean I'm not trying to press you for more, don't get me wrong, but son-of-a-bitch.

Vuci: I'll tell you one thing. If it looks like—if I make good money, I'll promise you, you won't have nothing to worry about, it'll be there. . . .

Grevemberg: How in the hell are you going to give it to me?

Vuci: Well, now it's going to be cash for one thing.

Grevemberg: That's all right. I wouldn't have it in another way.

Vuci: Now, that's, uh—

Grevemberg: How in the heck could you make a check out to me?

Vuci: I wouldn't think about that. That's it. I said that a while ago. You said, "How you going to do it?" I said "For one thing, it's going to be cash." You don't have to worry about that. As far as being in a book, it ain't going to be in no book. It's just a loser to me as far as that's concerned. I just let myself get a horse. I'll make a ticket out for a horse, that's all.

(You have just heard a conversation between Francis Grevemberg, superintendent of Louisiana state police, and Frank Vuci, known gambler of East and West Baton Rouge Parishes. I just discussed the possibility of letting him open a bookie joint. As a matter of fact we made definite arrangements to begin to open a bookie joint over in West Baton Rouge Parish. He's supposed to open it Monday, and I'm supposed to get \$250 per week payoff for the privilege of letting him run the place.)²³

Another active law-enforcement office in Louisiana is the sheriff's office. The sheriff's office in Baton Rouge makes extensive use of wiretapping.²⁴ There are a number of wire-taps constantly employed every day in investigations of various crimes within the parish. The sheriff's office has only

a few pieces of equipment and relies almost wholly on the services of a private detective for its wiretapping needs.²⁵ This private detective began to work for the sheriff shortly after the sheriff caught him installing a private wiretap on a telephone pole and chased him several blocks in a car before he could apprehend him. The private detective and the sheriff have maintained good telephone company connections and have no trouble in making their installations.

The use of microphones is universal in New Orleans and in Baton Rouge.²⁶ New Orleans police state that they principally use microphones and transmitters in narcotics investigations and investigations of prostitutes. In Baton Rouge all the law-enforcement offices use concealed microphones and transmitters in criminal investigations. Both the state police and the sheriff's office have indicated that they are presently contemplating purchasing parabolic microphones. All law-enforcement offices are equipped with pocket recorders and make frequent use of them.

Practically all the law-enforcement offices use concealed cameras, but apparently these cameras have to be triggered manually. They all have installed in interrogation rooms two-way mirrors and concealed microphones. Bugging of prison cells is also a routine procedure.

There are a half-dozen private detectives in New Orleans and a like number in Baton Rouge who are equipped and available for electrical eavesdropping assignments. They either have a contact in the telephone company or employ a former telephone company employee.

The most sensational private wiretapping scandal in New Orleans occurred in 1955 when private detective Sidney J. Massicot, operator of the United Detective Agency, was charged with having employed a former telephone company employee by the name of James F. Donnelly to tap the telephone of Mayor Morrison of New Orleans.²⁷ At the time

of this tapping, Morrison was a candidate for governor, opposing Governor Earl Long who was running for reelection.

The wiretapping came out into the open when Massicot, a long-time friend of Mrs. Long, told her that he had a humorous recording of a telephone conversation between Mayor Morrison and his wife. Massicot was invited to bring a tape recorder and the tape over to a suite in the Roosevelt Hotel where Governor Long, Mrs. Long, and a number of prominent political figures maintained a headquarters during the election. Massicot played the tape recording in the presence of the governor and his wife and a number of other people.

Mayor Morrison was informed of the recording's existence by one of those present in the Roosevelt Hotel room when the recording was played. Local prosecution was begun, but the case was finally turned over to the federal authorities for prosecution under the Federal Communications Act. The New Orleans district attorney explained that since wiretapping was only a misdemeanor in New Orleans, it was thought that the case ought to be handled under the more severe federal act.

A much-publicized trial took place in 1956 and the early part of 1957.²⁸ From the testimony it was learned that the wiretap had been a very crude one. A connection was made on the terminal lines of the mayor's phone located on a telephone pole just across the street from his house. Then this connecting line was pulled into the second-floor apartment (rented by the wiretapper) opposite the mayor's house.

The tape recordings, themselves, had been destroyed by the time of the trial. This had also been the fate of type-written copies of the conversation. The governor's wife admitted she destroyed the copies she received because her attorney told her it was dangerous to possess them. The only testimony concerning the conversations overheard by the

wiretappers was given by the witnesses who had been present in the governor's hotel room and who had heard the recording.

Although the tapping was fraught with political implications because of the pending election and the apparent sponsorship of the tapping of his opponent, Mayor Morrison, by Governor Long, there was no indication that the conversations that were recorded had anything to do with the election.

Massicot never took the stand, but he informed our study that he had not installed or authorized the wiretapping of Mayor Morrison's phone. He said that Donnelly, the ex-telephone company employee, had done it on his own and had brought the tape recording to him, indicating that there were funny conversations on it. Massicot said that as a friendly gesture to the Longs and in a spirit of fun, he offered to permit them to hear the conversation.

Donnelly had given members of the Federal Bureau of Investigation a confession-statement when he was arrested in which he admitted making the installation but declared that he had done so as an agent of the United Detective Agency, believing that private detectives who were commissioned special police officers by the police department were authorized under the Louisiana statute to install a wiretap for the purpose of collecting evidence. At the trial, Donnelly retracted this confession. Massicot and Donnelly and an additional defendant, Robert Raymond Lirette, another agent of the private detective firm, were convicted under the Federal Communications Act and sentenced to one year in prison. On appeal, the Court of Appeals for the Fifth Circuit affirmed the conviction.²⁹

It is interesting that police department officials testified at the trial that persons who sought to engage in the business of private detective could apply to the police depart-

ment for a gun permit and a special police commission which gave them police powers during their working hours. There was some concern as to whether such police powers made private detectives officers of the law and thereby authorized them to wiretap. However, the Louisiana statute permits officers of the law to wiretap only for the purpose of obtaining information to detect crime. Donnelly never claimed that to be his purpose. The argument was never pressed, since all the parties realized that whatever weight the argument would have in a Louisiana prosecution, it would have no weight in a prosecution under the Federal Communications Act, which gives no authorization for law-enforcement wiretapping.

Massicot has in the past used electronic eavesdropping techniques in private detective investigations.⁸⁰ On an earlier occasion, his agency had become involved in another prosecution when he had authorized a young agent to install a microphone in the bedroom of the estranged wife of one of his clients. The microphone and recording device were discovered, and the young employee of Massicot, who was working part-time as a private detective while going to school, was arrested and charged with trespass. Since wiretapping had not been employed, and bugging was not specifically prohibited in the Louisiana law, trespass was the only crime involved.

Some private detectives report that they have been solicited by former telephone company employees for wiretapping jobs. The usual price requested for a wiretap is \$100.

There is one principal wiretapper in Baton Rouge who not only has a brisk private practice, but who, as we have seen, does a substantial portion of the wiretapping of the sheriff's office and the police department. In fact, the sheriff's office has not sought to equip itself with devices, since

it relies almost solely on this man. Before coming to Louisiana, this specialist had been a police officer in another Southern state, where he engaged in extensive wiretapping, especially political wiretapping.

This detective has excellent contacts in the telephone company with employees who provide him with pair and cable number locations at \$100 a job.³¹ Such friendships even provide him with a monitoring service done for him by telephone company employees at the central office of the telephone company. His work for law enforcement is usually done without charge or at a minimum fee. In return, however, he gets complete freedom to wiretap privately. His private wiretapping involves domestic relations cases, insurance cases, and some industrial work.³²

For a long period of time, this detective has been trying to build up his supply of equipment, and he believes that equipment purchased from the regular supply houses is usually overpriced. Recently he has employed a young electronics technician whose principal assignment is to develop and install wiretapping and bugging equipment. As a result of the successful work of this technician, the private detective is planning to set up a sideline business for the selling of equipment he is producing.

The detective's technician has recently developed a transmitter which is built in diagram form into slots in a piece of cardboard one eighth of an inch thick, eight inches long, and four inches wide. The use of transistors permits this design. The transmitter is specifically built to be placed underneath the brown backing paper of a diploma or a picture hanging in a room. The detective claims that it will broadcast for three hundred hours, with a range of one hundred to two hundred feet. He takes pride in explaining that when he places this thin transmitter behind a picture

in a hotel room, he frequently gets access to the picture through the wall of the adjoining room.

The Special Citizens' Committee on Crime in 1954 and the Metropolitan Crime Commission of New Orleans over a period of years have clearly established that the organized gambling interests in New Orleans have many excellent contacts among telephone company employees for the purpose of obtaining telephones for the gambling business and for installing extensions, added lines, and any other telephone communication system they need.³³ There is evidence that this relationship was known by police officers assigned to these gambling establishments. It was testified on one occasion that raiding police officers merely disconnected wires from the telephones, leaving the telephone instruments there along with the loose wires. Immediately after the police left, the telephone company employee paid by the gamblers came into the room and simply re-connected the telephone.

An additional service supplied the gamblers by telephone company employees was tapping into the wire service, which would permit gamblers who did not pay for the service to get speedy race results, essential to the operation of a handbook. In one case it was testified that a telephone company truck was constantly parked outside a handbook operation and that the telephone company repairman spent most of his time betting on horses.³⁴

BOSTON

Massachusetts is second only to Louisiana in providing law-enforcement officers with broad authority to tap telephone conversations. Massachusetts law is most peculiar in that there is no outright prohibition against wiretapping applicable to anyone. Under the provisions of the law, any person may wiretap if he first gets the written permission

of the district attorney or the attorney general.¹ He doesn't need the written permission of the district attorney or attorney general if he does not intend to injure another and if he does not intend to procure information concerning an official matter.²

Needless to say, law-enforcement officers should have no trouble getting the written consent of the district attorney or the attorney general to use wiretapping as a weapon against crime.

This strange statute was enacted in 1920, and until our investigation dug into the past, the history of the law and the reasons behind its passage had been lost. Old-time police officers who had been on the force in 1920 could not recall the background of the 1920 act. Nothing existed in the files of the legislative records library of the Massachusetts General Assembly which would throw light on the subject. No record of legislative debate is kept in Massachusetts. The *Legislative Journal* merely records the dates of the movements of a bill, the names of its sponsors, the motions for amendments, and its final passage.

We noted in the *Legislative Journal* that the wiretap bill was introduced for the first time on January 14, 1920, by a Mr. Abbott of Haverhill, and proceeded to the newspaper room of the State Capitol Building to look at the *Boston Herald* for that date. Our California study had taught us how valuable contemporary newspaper reports are in revealing the background of legislation.³

On page 3 of the *Boston Herald* for January 14, 1920, a two-inch story appeared under the headline, "Would Place Ban on Dictagraphs. Bill in Legislature Inspired by Recent Incident." The story follows:

A sequel to a recent revelation of a plan to obtain incriminating information relevant to the administration of the law by District Attorney Pelletier appeared yesterday in the form

of a bill filed in the legislature by Representative Abbott of Haverhill, who proposes that eavesdropping by the tapping of wires shall be made a crime. Mr. Abbott said in drafting the bill, he had in mind not only the Pelletier incident but also leaks of important information in Washington. Mr. Abbott's bill provides a penalty of two years imprisonment, a \$1,000 fine or both for the use of a dictagraph as forbidden by the proposed act "with intent to divulge official matters or to injure another person." By convincing the attorney general of the legitimacy of his purpose, however, a person could, under the provisions of the bill, obtain written permission from that official to tap a wire. The law would apply to police officers and detectives, as well as to the general public.

For fuller information on the "Pelletier incident," the "morgue" of the *Boston Herald* directed us to the front page of the *Herald* for November 15, 1919. There, a bold headline story revealed that District Attorney Pelletier of Boston had uncovered a hidden microphone in his office, which he claimed had been planted there two years earlier by a citizens' crime commission.

Pelletier released a statement to the papers, quoted in full, in which he claimed that the person who had been monitoring his office conversations as picked up on the microphone had made a full confession to him in which he said he had been hired to bug the district attorney's office. Pelletier described the microphone and its installation as follows:

This dictagraph is about the size of a watch, not much thicker than the thin model watches. It was concealed behind various papers and bundles on the top of the clothes closet, and the wire was like very thin silk, not much larger than a large thread. This was concealed in the molding and left the office through the moldings and those conduits reserved for wires of various kinds. It originally went to the receiving office on

the 11th floor, first at room 1109, and then at room 1103. Afterwards it went to room 610 on the 6th floor, tapping a similar device in the office of ex-assistant district attorney Daniel D. McIsaac on the 9th floor.⁴

Pelletier further stated that the confessed eavesdropper had told him that he took notes in longhand of conversations coming from the district attorney's office and the assistant district attorney's office and that although he had overheard nothing incriminating against either officer, he had been induced to make false reports indicating that the two were misbehaving in office.

No wonder, then, that certain legislators sought to protect public officials from a repetition of this kind of spying by requiring that written permission be obtained from the district attorney or the attorney general before electronic eavesdropping could be practiced. It was clear that no effort was being made to restrict law enforcement, and, as has been stated, only electrical eavesdropping for certain restricted purposes was included in the ban.

Initially the bill was opposed. One legislator called it a product of hysteria, and a representative from Cambridge made the interesting observation that a prohibition against electrical eavesdropping "was an unjustifiable trespass on personal liberty."⁵

Although for thirty-nine years law-enforcement officers in Boston have been authorized by the legislature to wiretap, there are no visible signs that they ever made use of the privilege. In fact, Boston law-enforcement officers deny that they wiretap. On first blush, this is strange, since not only are they allowed to wiretap, but the Massachusetts rule of evidence permits evidence to be used in criminal cases no matter how it was obtained. Thus, one is puzzled by law enforcement's failure to acknowledge its use of wiretapping

or to credit this technique with the solution of major crimes. There is no such reluctance on the part of the New York police.

As is the case in New Orleans and Baton Rouge, the Boston community believes that its law-enforcement officers do not wiretap. An initial series of interviews with representative citizens of Boston and an earnest study made by two Harvard Law School students almost convinced us that Boston presented a unique picture of deliberate restraint on the part of law-enforcement officers in the face of wide-open wiretap authorization.

The situation became even more confused when it was learned that in the last few years constant efforts have been made by the legislature to amend the Massachusetts wiretapping statute by including additional restrictions which would require law-enforcement officers to obtain a court order before they could wiretap. These amendments were bitterly opposed by law-enforcement agencies. Although a bill was passed by the legislature, it was vetoed by Governor Herter on the ground that it "would interfere with the efficiency of law enforcement." ⁶

It was natural for us to ask why the legislature would seek to restrict law-enforcement wiretapping if law enforcement was not wiretapping. Further, why did the law-enforcement agencies fight these restrictions, which were no more stringent than those applying to the New York law-enforcement agencies, if Massachusetts law-enforcement officers did not resort to wiretapping anyway? And finally, isn't it reasonable to suppose that law enforcement must have made out a good case of efficient and effective wiretapping under the existing statute for the governor to veto a bill passed by the legislature on the ground that it would interfere with law-enforcement efficiency?

We were told that these questions should not trouble us,

since it was quite common for the Massachusetts legislature to enact laws for the correction of evils which were revealed in other states, but which did not exist within the boundaries of the Commonwealth, and to be forever closing loopholes through which nothing leaked. It was also common, we were assured, for law-enforcement agencies to fight without compromise for the retention of a right which they never exercised.

A second and more intensive investigation of the Boston area revealed that the honest citizens of Boston were uninformed concerning law-enforcement practices, and that law-enforcement officers practiced concealment rather than restraint with regard to wiretapping.

Why so much secrecy? It became clear after discussions with the attorney general's office, the state police, and the district attorney's office that law-enforcement agencies believed that if certain elements in the legislature learned that law enforcement was successfully solving crimes through the use of wiretapping, they would promptly and effectively take this weapon away. Law-enforcement officers explained that the real reason they have been able in recent years to prevent the legislature from imposing further restrictions on them with regard to wiretapping has been their success in convincing the legislature that they really weren't using such tactics. This fear of exposure manifests itself in budget requests and the quantity of equipment which is purchased for wiretapping purposes. Every effort is made to not show a sign.

Another reason for secrecy is the desire of the law-enforcement agencies to comply with the wishes of telephone company representatives who aid them in their wiretapping.⁷

The only law-enforcement agency in the Boston area which apparently does not wiretap for law-enforcement purposes is the Boston Police Department. We learned this

not only from the Boston Police Department itself, but from every other law-enforcement agency, which, while admitting its own wiretapping practices, informed us that the Boston Police Department does not employ wiretapping in its criminal investigations. An interesting interview was obtained with the top-ranking officers of the department. Commissioner Sullivan, now dead, was ill and could not attend.

Most of the talking for the police was done by the legal adviser to the police department. He explained why the Boston police do not wiretap. First, he said, regardless of any legislative authority, the Boston community would rise up in indignation if it learned that the police wiretapped, and would not tolerate such a police practice. Second, he said, the police department itself believes that wiretapping is "dirty business" and not a proper police weapon. And third, and most significant, he said that the Boston Police Department found wiretapping unnecessary, since equally good results could be obtained by standard investigative techniques. When he was reminded that every major police department in the country disagreed with him, and claimed that wiretapping was necessary to combat crime effectively, he answered that only a lazy police department would take such a position, and that the Boston police, without wiretapping, have been very effective against crime.

A number of police officers possess their own equipment, no more than a set of earphones, a condenser, and a pair of wires, which they use for their own wiretapping.⁸ No effort is made by the police department to discourage this, but it is not a common practice or a police department procedure and cannot properly be termed police department wiretapping.

There is some indication that the police department has used wiretapping to check on some police personnel for in-

ternal security, but even this has not been a standard practice.

Even in New Orleans, where the New Orleans police denied they wiretapped, although they had a legal right to do so, they still emphatically stated that wiretapping was an exceptionally good police weapon and that they "intended to use it some day."

The attitude of the Catholic Church was suggested as a possible explanation, because of its great influence on the lives of Boston policemen. The close friendship between Cardinal (then Archbishop) Cushing and the police commissioner was well known. However, the position of the Catholic Church on wiretapping did not provide an answer, since the Church approved of limited police wiretapping for a proper law-enforcement purpose. The following pronouncement appeared in the May 8, 1954, issue of the *Pilot*, the Church's newspaper, under the title "Is Wiretapping Morally Unsound?"

Wiretapping and other types of conversation monitoring have been given widespread publicity in recent weeks and many readers have inquired about the moral overtones in such practices. The following commentary was prepared in response to the query: "Is it morally right to explore the secrets of others, or to arrange for secret recordings of conversations which are regarded as secret by those who take part in them?"

It is ordinarily wrong to explore secret information passed by others, or to make use of any means of discovering in hidden ways the content of the conversation of others without at least their presumed consent. Each person has a right to secrecy in relation to his knowledge, opinions, convictions, etc., and in relation to any information which he may have legitimately acquired which he regards as valuable for his own purposes. The right in question is a strict right. To violate it will be an act of injustice which will require every possible effort of restitution. If a person communicates any items of information of the

types mentioned to another on condition that secrecy be maintained in relation to it, the one thus charged is bound in justice as well as in truth or fidelity to fulfill his promise. Similarly, justice is violated by one who, without due authorization, takes measures to discover information belonging to another against the reasonable wishes of the latter.

It must be noted, however, that strict rights cannot be vindicated absolutely and under all conceivable circumstances. Thus a man's right to his personal property is a strict right, but he must often yield it temporarily to another for whom it will be an indispensable means here and now of saving his life; as for example, a ladder belonging to a neighbor which will be needed to effect the escape of a person trapped in a burning building. In like manner, a person's right to secrecy must yield when it comes into conflict with a higher right of another, or with the requirements of the common good; or when he cannot exercise the right without detriment to his own higher interests.

For example, if a person has secret information which can be used to save an entire community from destruction, he would be unreasonable in demanding that those responsible for the safety of the community respect his right to secrecy. Nor would it be a violation of justice for one in a position of responsibility to take measures to discover this information, if he had prudent reason to suspect it to be available, and if he could not come into possession of it in any ordinary way.

Who are the ones who are justified in transgressing the right of secrecy against the knowledge and will of those who possess it? Obviously, parents may override any claim of secrecy on the part of their children, for example, by intercepting their correspondence, when they have reason to suspect that by so doing they may correct their children's faults, or safeguard them from harm to which they may have unwittingly exposed themselves. Again, a person who has definite reason for thinking that another is planning to attack his life, or to inflict damage on his property, may disregard the right of secrecy, whether of his suspected aggressor or of any other

person in a matter which is definitely less important than his own threatened right.

Public officials are justified in disregarding the right of secrecy of private individuals as often as they are honestly convinced that the best interests of the community which they serve will require such intervention. It is particularly necessary that steps be taken to discover hidden information that will expose the activities of dangerous subversive agencies, or that may be of great importance in anticipating a projected enemy attack and in preparing adequate measures of national defense. Those who are employed by the government, and who thus become involved in projects which are important for the community as a whole as well as for the advancement of their own personal interests are necessarily subject to searching investigation. Their right of secrecy must be greatly limited, and even their private activities, which in so many ways can touch upon their public responsibilities must be matters of public concern. They must expect, therefore, that necessary measures will be taken to verify their integrity and their faithful fulfillment of their duties. Many such measures would be objectionable and unjust if employed on the level of purely personal relations. The safety of the nation, however, and the best interest of society often require the sacrifice of individual rights that would otherwise be unassailable.

On the other hand, there are limits beyond which public officials are not justified in going in the exploration of secrets. They must never forget that secrecy is a fundamental human right which will yield only when it is in conflict with a definitely higher right that cannot be otherwise assured. Thus it would be wrong to explore the secrets of others as a matter of mere routine without any consideration of the need for such measures in each individual instance. It would be wrong, too, to explore secrets for purely personal reasons, or as a means of gaining revenge or satisfying hatred. It would likewise be wrong to employ deceit or fraud in the organization of means of discovering secret information.

It is unfortunate that any attack on the natural right of

secrecy would be necessary or justifiable. Dishonesty and disloyalty are, however, actually existing attitudes which must be recognized and dealt with adequately. The best safeguard for the right of secrecy is the effort to be honest and upright. To the extent that dishonesty and corruption are removed from public life, to that extent it will be unnecessary to resort to measures of defense that imperil the natural rights of the individual.⁹

There is no evidence to indicate that the present Boston Police Department administration is insincere when it expresses the belief that wiretapping is "dirty business" and not a proper law-enforcement weapon. The only challenge we have heard directed at this statement was made by the present district attorney of Boston at the August, 1957, annual meeting of the National Association of County and Prosecuting Attorneys in San Francisco, California.¹⁰ In a progress report of this investigation made to the National Prosecutors during the San Francisco meeting, the position of the Boston Police Department was stated. At the close of the report, the district attorney of Boston rose and announced from the floor that the Boston Police Department had not dealt candidly with our investigation. After describing his efforts in recently persuading the Massachusetts legislature not to place any further restrictions on wiretapping in Massachusetts, the Boston district attorney proclaimed, "The police department wiretaps, we wiretap, the attorney general wiretaps, and the state police wiretap, and we've all been doing a very effective job with it."

There is in any case evidence that the Boston Police Department is not as effective in combating crime as it would have us believe. In 1955 and 1956 a special Massachusetts legislative commission, set up for the purpose of investigating organized crime in the Commonwealth, conducted investigations and held numerous hearings.¹¹ The special com-

mission filed its report in April, 1957. After disclosing that organized gambling racketeering was rampant in Massachusetts, and especially in Boston, the commission pointed out that this condition existed with the knowledge and protection of police officers. It was careful to add that most police officers were honest and good law-enforcement officers, but that those who were not corrupted the efforts of the entire police department. Evidence was obtained of definite, regular payoffs to police officers and of wholesale non-enforcement of the law. Following these revelations, the commission stated, "It goes without saying that law enforcement as to organized crime is not being effectively done by the police agencies of the Commonwealth today."¹²

Police departments throughout the country employing wiretapping use it most often in racket investigations relating to organized gambling and prostitution, although they dislike to admit this and often deny it.

An active wiretapping law-enforcement agency in the Boston area is the state police.¹³ Wiretapping assignments come to them from the various district attorneys' offices throughout the Commonwealth and from the attorney general's office. One or two district attorneys, for security reasons, prefer to do their own wiretapping and maintain equipment and a technician for this purpose. The attorney general's office also possesses its own equipment and its own technicians.¹⁴

It would be misleading, however, to indicate that any substantial amount of equipment is possessed by the district attorney's office, the state police, or the attorney general's office. Fearful of a legislative crackdown, these law-enforcement agencies claim they must keep their purchases of equipment to a minimum. The attorney general's office employs a former FBI agent to develop and build electronic eavesdropping equipment from standard radio and electrical

parts,¹⁵ and has also established contact with an electronics engineer for the purpose of obtaining equipment when necessary.

The total wiretapping and bugging equipment possessed by the state police in Boston is only about \$3000 to \$5000 worth.¹⁶ This equipment, it should be remembered, must be available for wiretapping assignments throughout the Commonwealth at the request of the district attorneys or the attorney general. This meager supply of wiretapping equipment consists of only one each of the various devices used to intercept and record conversations on the telephone, in a room, or on the highway. Thus, one assignment exhausts the available equipment.

When this happens and another important wiretapping job must be done, the law-enforcement agencies in Boston have established the practice of calling upon a private New York wiretapping specialist, who makes the trip from New York to Boston with a quantity of modern, expensive wiretapping equipment.¹⁷ This private specialist has developed and possesses some of the most elaborate electrical eavesdropping devices, which he has also made available to the New York Police Department and district attorney's office. He is used by the Boston district attorney, the attorney general of Massachusetts, and the state police in Massachusetts. A recent price list provided for the Massachusetts law-enforcement officers indicates what law-enforcement agencies must pay to obtain such private services. The prices are listed as follows:

1. Rental of a recorder \$45.00 per week
2. Rental of a miniature switchboard .. \$32.50 per week
3. Rental of a dial recorder (pen register) \$6.50 per week
4. Services of the private specialist \$100.00 per day¹⁸

Thus, the bill for a five-day week of service would amount to \$584.

Within the limits of the available equipment and the private specialist's schedule, the district attorney's office, the attorney general's office, and the state police employ wiretapping in every major criminal investigation where it is believed its use would be of help.

In past years, the attorney general's office and the state police received cooperation from employees of the telephone company and were able even to obtain leased lines running direct to listening posts set up in the state police headquarters or the attorney general's office.¹⁹ More recently, as a result of the nationwide publicity concerning wiretapping, such cooperation has been discontinued, and law-enforcement officers are left on their own to establish their locations.

One of the uses to which wiretapping is put by the state police and the district attorneys is surveillance of members of a suspect's family, in the hope that telephone conversation may provide evidence of guilt. Often they pick up information on an unsuspected crime. Recently, state police said, they learned about the plan for a major liquor store holdup while listening in for an entirely different purpose.

Perhaps the most sensational case in which wiretapping was used in recent Boston history was the Brink's holdup and robbery. In the initial stages of the investigation, the New York specialist was called in by the district attorney and state police for the purpose of installing wiretaps.²⁰ This private specialist was able to obtain the cooperation of telephone company employees, and leased lines were provided so that one monitoring post could be set up for the purpose of recording conversations going over telephones in various parts of Boston.²¹ This wiretap surveillance was so extensive that leased lines were used to pick up telephone conversations occurring within a fifty-mile radius of the cen-

ter of Boston. Wiretap evidence, however, was not used in the final prosecution of the case.

Only a handful of private detectives in the Boston area engage in private wiretapping. None of these has any extensive wiretapping business. As a general rule, lawyers and businessmen do not have a high regard for Boston private detectives. An important business wiretapping or domestic relations assignment is usually given to out-of-state wiretappers, often from New York.

One private detective reports that there is a brisk demand on the part of business for electrical eavesdropping devices. Apparently newspaper publicity on bugging and wiretapping activity has whetted the appetite of Boston business people.

One Boston department store in the downtown area has employed closed-circuit television to deter shoplifting, and another department store is in the stage of negotiating for a similar installation. A number of business houses employ concealed microphones in and around their plant or office to detect pilfering or to check up on employee loyalty and efficiency.

A leading newspaper in Boston monitors all its telephone conversations, recording them on tape, and has its reporters carry miniature recorders for interviews.

Perhaps the best private wiretappers and the most active are those employed by the organized gambling racket. Apparently, these private wiretappers have been able to buy considerable telephone company employee help, and thereby obtain telephone company equipment and line information.²² The large-scale telephone installations used by bookmakers are made possible only by this type of activity. One private wiretapper for the rackets claims that his telephone company employee contact is so good that he is able to work at the main frame of the telephone company in mak-

ing his wiretap installations. Telephone company employee assistance to gamblers was specifically established by the special Crime Commission. The report of the Commission refers to it as follows:

The commission has seen that the bookmakers do get aid and assistance from telephone company employees. In fact, the company has pointed out instances to the commission. The company has over 20,000 employees and here the relatives and friends situation is about to enter. Further investigation intended to devise ways and means of making such cooperation difficult or unwise would have to be done before any feasible solution could be made. However, more rigid enforcement of the laws would be a more important step towards solution of the problem.²³

A wiretapper for the racketeers is primarily assigned to set up and service the elaborate phone-extension system through which bookies can operate a great number of phones in one location, all ringing off telephones listed in other parts of town and registered in the names of persons unconnected with gambling activity, usually elderly widows or working spinsters.

The wiretapper is also important in the operation of the wire service which is the lifeline of the bookmaker. The Kefauver investigation exposed the activity and history of the great national wire service which sped racing information across the country, keeping the bookies in business and making nice profits for the operators of the wire service. After the national wire service discontinued its activity, sometime in 1952, a number of independent wire services sprang up in Boston, one in particular with the ambition of reinaugurating a national coverage.²⁴

Two or three expert wiretapping technicians were used by the promoters of the new Boston wire service to make telephone installations which would enable one person to

speak over eighteen telephones at one time. Also, elaborate plans were made to sneak track information out of the race track so that news of race results could be sent over the wire as soon as they were known. In addition to the private wiretappers, there were a number of telephone company employees who were paid handsome fees to make telephone installations for the bookies and to provide setups which would permit the bookies to operate conveniently and with security.

The official telephone company policy against such cooperation and against the use of telephones for gambling purposes was evidenced by the frequent and periodic raids by the special agents' division of the New England Telephone Company whenever illegal telephone installations were discovered. Some of the gamblers, however, say that their trouble with the special agents' division began when they attempted to set up installations on their own without first buying police and telephone company employee protection.

One of the most elaborate and dramatic assignments accepted by wiretappers for racketeers was the bugging of Suffolk Downs race track.²⁵ In the past, under previous wire service systems, race track information was obtained by the use of "peeps," which were watching stations situated outside the race track and in sight of the tote board. By means of a high-powered telescope, an observer read the results and immediately telephoned them to a relay station, where they were radioed or sent over long-distance telephone or telegraph to various subscribers to the wire service.

The promoters for the new Boston wire service wanted something different. The first thing they considered was the tapping of a telephone line in the basement of the administration building at Suffolk Downs leading to a pay phone upstairs. The report of the special Crime Commission described the technique as follows:

The tap would consist of a device and a "latching type tumbler switch." Next, the bell in the phone booth would be silenced and since pay phones at the track are locked during race time no one would interfere with the working of this system. From this tap a wire would be run to a microphone installed to a loud speaker at the track, or in some other location, where the entire operation would be completely automatic. Thus, a person away from the track at an appropriate time, would dial the pay phone number and the impulse would activate the latching time tumbler. Each time the phone rang it would move the switch one notch, and on the third ring the switch would release the tumblers and the line would be open direct to the microphone. This required that the person call, for example, three times, listen for the correct number of rings, and hang up instantly, until the third call which would have the line open. This elaborate precaution was to prevent an accidental connection by a stranger. In other words, it was a code.²⁶

A real test of this installation was never to be made. After the setup was completed, and during the initial test, police officers, race track officials, and telephone company investigators arrested the wiretapper making the test, having been tipped-off to the proposed plan.

One wiretapper who works for racketeers also accepts private wiretapping assignments for a number of lawyers, usually lawyers representing racketeers. He claims to have put in a great number of bugs and taps. He works under the guise of a telephone company repairman and boasts that he has never been refused admission to any home or building. He claims to have made a number of taps right at the main frame of the central telephone company office. As part of his disguise he borrows a telephone company truck or pays the driver of the telephone company truck to park near his assigned job. Then he makes it appear as though he is leaving the truck on a telephone company assignment.

He recalls one instance where he was retained by a lawyer to tap a telephone in an apartment occupied by three nurses. He planned also to put a microphone in the room, but forgot to take a microphone with him. Leaving the room he went to a restaurant, entered a public phone booth, and removed a carbon microphone from one of the pay telephones. He then returned to the room and found that the janitor had wandered by and was looking at the dismantled telephone. However, the janitor immediately assumed that the wiretapper was a telephone company employee and stood by and watched him while he installed the microphone and the wiretap.

Personal interviews with persons engaged in the organized gambling racket in Boston all corroborated the finding of the special Massachusetts Crime Commission that police officers are on the payroll of the gamblers and provide protection for their activities. The gamblers also claim to have excellent contacts with telephone company employees for the purpose of setting up any telephone installation required by the bookmaking business. According to one gambler, the gamblers are not worried about police tapping their phones, since they are sure that police are not engaged in this practice. They do believe that the district attorney and the attorney general and the state police are tapping, but not tapping them. They feel confident that if the police ever did try to tap their phones, they would immediately be warned by a friendly telephone company employee.

These gamblers excuse police willingness to take money on the ground that police are underpaid and need the money to support their families. Gamblers disclaim that they tap each other's telephones and do not believe that any gambler engages in this activity. According to them, it would be like "ratting" on one another.

The gamblers interviewed acknowledged the use of decoy phones. They said that they usually pay a lady who is out of her house most of the day a monthly rate for permission to use her telephone number. Then during race time, dialing that number will ring telephones used by bookies at another location. The gamblers explain that a telephone company employee who installs telephones for bookies usually gets \$50 a phone.

As would be expected, the gamblers interviewed were opposed to police wiretapping. However, one exhibited unexpected objectivity and a sense of public responsibility. After being asked what he thought about law-enforcement wiretapping, he answered, "It would be all right if it could be confined to cops catching criminals. But you get all kinds of talk—a guy has a sweetheart—or is abusing his wife—all that comes in. For this reason I'm very much against it."

3

PROHIBITION JURISDICTIONS

SAN FRANCISCO

LOS ANGELES

As we have learned, California prohibited telegraph wiretapping as early as 1862. In 1905, nearly a half-century later, telephone wiretapping was prohibited as a result of the newspaper wiretapping scandal exposed by the *San Francisco Call*. These prohibitions directly applied to law-enforcement officers. The 1905 legislation has remained the California law up until the present day. The unusual and remote history behind this legislation, which we have reported, had been lost in California until the time of our study. The California legislative counsel could provide no clue to the background of the law, and few Californians indeed had the slightest idea that their wiretap prohibition stretched back to the middle of the nineteenth century.

From 1905 to the 1920's and 1930's, the California newspapers periodically reported incidents of wiretapping. Some of the headlines are interesting: "Wiretappers caught at work: Arrested at Vallejo while installing a complete apparatus" (1908); "College men tap telegraph wires: Harvard graduate and former Cornell lecturer sentenced to San Quentin" (1909); "Wiretapper convicted" (1913); "Accused of wiretapping by phone: Electrical induction case at Los

Angeles believed first in world" (1914); "Suspects arrested and then freed in wiretapping case: Pair believed by police to belong to gang whose operations cover entire Pacific coast" (1920); "Police foiled in wireless tapping case: Charge firm intended to obtain stock data by radio but precedent and law is lacking" (1922).

These cases had to do with wiretapping for the purpose of intercepting news of stock operations or wiretapping by gamblers for the purpose of past posting, the scheme by which the wiretapper received the results of a race minutes before the bookmaker, enabling him to get his bet in, which was always a winner. It is interesting that past posting reported in the newspapers in the early 1900's played a major part in the Kefauver investigation almost a half-century later.

It is significant that the California statute was passed because of the outrage felt over wiretapping conducted by private parties. Likewise, the publicity concerning wiretapping throughout the years in California dealt almost entirely with private wiretappers. From 1900 through to the early 1940's, not a whisper was heard concerning police wiretapping, and it was generally believed that police did not engage in this activity. However, from 1900 to the present time, police in most of the cities in California have quietly used wiretapping as well as bugging as a weapon against crime.

In San Francisco, during the early period of police wiretapping in the 1920's and 1930's, this undercover activity was under tight control.¹ Only a few men, no more than five at a time, knew that wiretapping was being used. The equipment was locked up in a little room in police headquarters, and only the few men trusted with this work had access to the room. The wiretapping was used as an aid to

investigation, and its results were never produced as evidence because of the statute.

The police chiefs of that time considered these devices invaluable. Constant taps aided them in obtaining information and leads on robberies, kidnappings, rapes, gambling, and vice. The information gained from the wiretaps would be given to other operational units which would solve the case and produce evidence completely unrelated to the tap.

During this early period in San Francisco, a former telephone employee was appointed inspector of police and given the assignment of developing the electronic equipment that was necessary.² Most of the equipment used by the police during this time was put together by police officers with prior telephone company experience. With the secret help of the special agents' division of the telephone company, police wiretappers had access to the information that would enable them to scramble up telephone poles and get to the right connections for telephones of suspected persons.³

A former San Francisco police chief recalled that it was through wiretapping that one of the most bizarre murder cases in San Francisco was solved. The convicted murderer, none other than the public defender of the city of San Francisco, is still in prison, serving a life term. The actual wiretap surveillance had nothing to do with the murder. The police were investigating the activities of a doctor who was known to serve the underworld by attending wounded mobsters. In order to check the doctor's contacts, a private detective working for the police department installed a tap on the doctor's telephone and kept a constant vigil. It was while this tap was on that a conversation was overheard between the doctor and the public defender, linking the public defender with a plan to kill a wealthy widow.

Through the use of the wiretap and the bug, the San Francisco police kept in touch with the movements of crim-

inals in the city. The police often knew, when goods were stolen, who the fence was going to be and where the gang was going to operate. This would permit them to pick up any particular safe robber or jewel thief they wanted. Wiretapping was also credited by a former police chief with aiding in the solution of pilfering from the San Francisco docks. Thus, wiretapping and bugging were constant operations, engaged in whenever police investigators thought this type of activity would be helpful.

During the 1930's and the 1940's, the police in Los Angeles were making similar use of wiretapping and bugging.

It was at this period that the police in both San Francisco and Los Angeles adopted a procedure which is still followed in many cities in California. Los Angeles appears to be the principal exception today. This is the system of using a private wiretapping specialist for law-enforcement wiretapping.⁴ The prohibitory statute made this technique a necessary one. The police departments could hardly show the purchase of expensive equipment, since the use of such equipment was illegal. It was convenient to employ the services of a private investigator who was well equipped and who usually was more experienced and better trained for this kind of work. The police could thus insist that they did not wiretap, which would be literally true. The private specialist understood that if he were caught, he was not to involve the police. But in return for his loyalty, he was assured that he would never have to face serious punishment.

Law-enforcement officers privately admit that they prefer not to use such a specialist, since they are always risking a breach of security. Leaks have been known to occur. In later years, police departments in the major cities have developed sound technicians among their own men. This is especially true in Los Angeles. However, where wiretapping

was concerned, police chiefs hesitated to authorize their own men to violate the law. Hence, in San Francisco to the present day, and in Los Angeles up until 1950, private specialists were given wiretapping jobs by the police.⁵ In San Francisco, also, former telephone company employees were given police jobs and assigned to wiretapping.⁶

The San Francisco police claim to have extensive equipment for bugging and wiretapping. They have various kinds of contact microphones, transmitters, walkie-talkies, automatic tape recorders, and pen registers. Information is still supplied technicians in the police department by telephone company employees which enables the police to locate the places where they have to make their electrical connections for installing wiretaps.⁷ This type of cooperation is prohibited by telephone company regulations, but is engaged in by well-meaning employees who seek to aid law enforcement to combat crime in the face of what they consider to be an unreasonable prohibition.

There are no available figures as to the quantity of wiretaps installed by the San Francisco police, but wiretapping is used constantly and a number of taps are operating every day. It is still true that only a few police officers are entrusted with wiretapping assignments, and the equipment is tightly controlled. The special squad detailed to this kind of work never exceeds ten men. The wiretapping is done only for the purpose of aiding investigation and never for the purpose of collecting evidence. The statute prohibiting wiretapping, of course, makes this policy necessary. However, police say that even if they were allowed to use wiretapping evidence, they would prefer not to do so, but to use their wiretapping only to obtain leads. In addition to keeping a complete check on the movements of organized thieves and pilferers, the police believe that wiretapping is

valuable in obtaining information concerning powerful and influential people who ordinarily would not be suspected of having anything to do with a criminal operation.

The officers responsible for the police policy in San Francisco say that they would welcome a New York type of law which would regulate wiretapping and would require court approval before a wiretap is installed. They admit that much information is received over a wiretap that could be used for blackmail or extortion, but the police department has never known an instance where a police officer has misused the information he has received. They believe, however, that the wiretap practices of police ought to be closely restricted, and only people who can be completely trusted should be assigned to this work, to ensure that only information revealing criminal activity is used by police; and then for law-enforcement purposes alone.

The district attorney's office in San Francisco is principally a prosecuting office and not an investigating office. Therefore, the occasions on which wiretapping would be employed are certainly not as frequent as they are for the intelligence unit of the San Francisco Police Department. However, the district attorney's office does possess wiretapping equipment and automatic recording machines,⁸ and receives good will and cooperation from telephone company employees who are interested in law-enforcement activity.⁹ On rare occasions, one telephone company employee has even monitored a conversation for the district attorney and provided him with a tape recording of it.¹⁰

The district attorney's office uses wiretapping on special occasions when it is believed it would be helpful in an investigation.¹¹ It is claimed that this occurs very infrequently. However, a considerable amount of recording of telephone conversations is engaged in by the district attorney under

the principle of the Malotte case, where the consent of one party to the conversation has been obtained.

In addition to the technicians who are full-time investigators for the district attorney's office, the district attorney's office of San Francisco has also employed at different times an electronics technician who is engaged in the business of private detection in San Francisco.¹² The district attorney's office believes that this private technician possesses equipment which is much better than the equipment owned by the police department. Because this private detective also accepts investigative assignments from defense counsel in criminal cases, the police department will not employ him for their wiretapping activities. On the other hand, the district attorney is reluctant to employ the police department's private specialist for security reasons.

The attorney general's office of California officially opposes the use of wiretapping for law-enforcement work and denies that the attorney general's office engages in the activity. As a matter of fact, the CIA division of the attorney general's office, which is the investigative intelligence unit, uses wiretapping whenever the occasion for it arises.¹³ However, they say that this does not happen frequently. The staff of this CIA division is small, and no wiretapping expert has been assigned to it.

Whenever a case arises which demands wiretapping, the division calls in a private wiretapper, usually the one employed by the police department in San Francisco, or a local manufacturer of wiretap equipment who has been willing to make police installations.¹⁴ The CIA division specifically points to one case where its wiretapping was credited with the solution of a major criminal activity. During an investigation of a murder-robbery gang which operated throughout the entire state of California, a wiretap was installed on the telephone of a certain lady and allowed to

remain there for thirty days. As a result of the conversations overheard on the telephone, law-enforcement officers from various counties were able to close in on the gang and make arrests which resulted in the conviction of the ring-leaders.

Los Angeles lagged behind San Francisco in the use of wiretapping and bugging. No really good sound equipment was owned by the police department until the early 1950's, when William Parker became police chief and modernized the department's sound division so that it became one of the finest in the country. However, this equipment, which the police department shows to visitors, is specialized for internal police bugging and investigations employing microphones. The department insists that it has no equipment specially designed for wiretapping, and that it does not use its electronic equipment for wiretapping. Although some wiretapping by police exists today in Los Angeles, it is done without the official authority of the police chief and against his specific instructions.

Strangely, however, law-enforcement officers throughout California and in close-by Las Vegas, Nevada, are ready to swear that the police department in Los Angeles is the most active wiretapping law-enforcement agency in the country. The Intelligence Division is given credit for most of the wiretapping. However, no direct evidence was found to support these opinions.

Prior to Parker's administration of the police department, wiretapping was engaged in by Los Angeles police, but never in a grand style.¹⁵ During the 1940's, a major part of the wiretapping for Los Angeles police was being done by a private wiretapper, Jim Vaus, who later changed sides and became a wiretapper for Mickey Cohen. In 1950, Vaus became a convert of Billy Graham's.¹⁶

During the time Jim Vaus was wiretapping for the police department, another specialist was conducting electrical surveillance for the district attorney's office in Los Angeles. This specialist also worked for the police departments of Los Angeles, San Francisco, Oakland, San José, Santa Barbara, Long Beach, San Diego, and other cities throughout the country. His work chiefly involved the installation of microphones and transmitters for law-enforcement agencies, but wiretapping was used whenever desired.¹⁷

According to Jim Vaus, by 1946 the Los Angeles Police Department did not have any electronic equipment for eavesdropping purposes. This hardly seems likely, since in 1941 the California legislature enacted a law prohibiting the use of any electrical device to overhear conversation but specifically exempted from the provisions of this law regular, salaried police officers operating under the written authorization of the head of their department in cases where it was necessary to use such a device in the solution of a crime. This exemption was obtained through the efforts of the California Peace Officers Association, to which the Los Angeles Police Department belonged. Not only must the Los Angeles police have been aware of the value of electronic devices for the purpose of surveillance in 1941, but the department played a part in retaining the legal authority to use such devices.

However, Vaus tells the story of how he developed for a number of detectives of the Los Angeles Police Department microphone and recording equipment for the purpose of solving a number of cases which had been baffling these detectives.¹⁸ Vaus claims that after he showed his first piece of equipment, he was constantly employed by Los Angeles Police Department detectives, especially members of the Vice Division. He says he was asked by them to develop telephone wiretapping equipment, as well as equipment that

would record the dialed-out numbers. He did develop the equipment and sold it to the Police Department. He adds that during this period, which was between 1946 and 1949, he was employed by the police to use this equipment for wiretapping purposes.

One of the police assignments Vaus claims to have received was the wiretapping of the home phone of a notorious Hollywood madam.¹⁹ Vaus says that he put a direct tap in the basement terminal box and that he and members of the Vice Division listened to the calls between the madam and customers who obtained her name and phone number from the *Player's Directory*, an actor's directory and guide, in which she advertised. According to Vaus, she would provide the customers with the description and meeting place for one of her girls, and the police, armed with this information, would be able to make a number of arrests.

The madam became suspicious and shifted her operations. She was later located, and renewed electronic surveillance was placed on her through Vaus, with the joint efforts of the police department and the sheriff's office. She was finally arrested and convicted, but not before she had claimed that she was being shaken down by several police officers who had information against her from wiretaps.

The effect of police wiretapping in Los Angeles on the solution of crimes cannot be gauged, since it is not credited in criminal investigation. No arrests or convictions could be traced to such a wiretap. Further, there is no evidence of police abuse through wiretapping. In the opinion of the members of the public, wiretapping by police in Los Angeles is nonexistent. One federal law-enforcement officer who has had close contact with the Los Angeles police states that wiretapping by Los Angeles police is held to a minimum and is done without the authority of the police chief.²⁰ He gave as evidence of the minimal nature of police wire-

tapping in Los Angeles the fact that recently a member of the Intelligence Division asked him to do some tapping for him in the guise of a federal investigation.

However, as in San Francisco, one form of eavesdropping is employed by the police which has been held by the California Supreme Court to be lawful. This type of eavesdropping is done frequently, as often as the police have occasion to use it. The Supreme Court of California held in *People v. Malotte* ²¹ that the police, with the consent of one party to a conversation, may listen in on a telephone conversation and record it.

The police interpreted this decision to cover the broad area of wiretapping with the subscriber's permission. Thus, police in Los Angeles have installed wiretaps on a telephone after obtaining the consent of the subscriber to the phone to making such an installation. It is to be noted, however, that the parties to a telephone conversation may not include the subscriber, so that the situation which existed in the Malotte case may not be duplicated in other cases, and these may present different questions for the courts.

One of the best examples of a wiretap employed by the Los Angeles Police Department where the consent of one party to the conversation was obtained was the famous Fratiano case.²² James Fratiano was attempting to extort money from George Terry and Carl Roddell of the Terry Oil Company. Through the cooperation of Terry and Roddell, the police were able to monitor Roddell's phone and Fratiano's extortion demand over the telephone was recorded. Fratiano was convicted on the basis of this record.

Also on the basis of this interpretation of the Malotte case, the Los Angeles police engage in a continuous and extensive check of the telephone conversations of members of the police department over police department phones. This surveillance is under the supervision of the internal

division of the administrative section of the police department. In his testimony before the Senate Judiciary Committee of California, Chief Parker admitted that this was a police practice and stated: "I don't think anybody will object to the fact that we record conversations of a policeman."²³ The tapping of police telephones in the new police building in Los Angeles is a very simple operation. These taps are all siphoned up to the seventh floor sound room where they can be monitored and recorded on the most modern and advanced recording equipment.

So far we have talked about wiretapping by police in Los Angeles from the viewpoint of the hunter. Those who are the hunted in this story operate, however, on a different set of assumptions. They are not willing to believe that the police do not engage in wide-scale wiretapping as a routine procedure. On the contrary, they believe the Los Angeles police are constantly and regularly wiretapping.

Our investigation attempted to learn what certain persons in Los Angeles who are reputed to be racketeers believed the police wiretapping practices to be. Such beliefs were relevant in our evaluating and understanding racket defense tactics against electronic surveillance and the racket's own wiretapping practices. One man who admits to a past in the racket world says that he caught two police officers actually on the telephone pole near his home recently, and that when they noticed that they were observed they came down from the pole and told him to forget about it.²⁴ This man claims he is no longer in the rackets, but he says that in the old days, while he was active as a racketeer, prior to the administration of the present chief of police, he knew that the police did a lot of wiretapping. He says the police had help from telephone company employees, who were giving this help in violation of telephone company regulations. He adds that he had just as good connections with telephone

company employees, and every time the police were on his lines he received a tip that they were there. Of course, he says, this required that regular payments be made by him to these telephone company employees.

Other persons with racket connections and generally reputed to be habitually engaged in criminal activities²⁵ claimed to have more recent information. They stated that they operated on the belief that the Los Angeles Police Department did a great deal of wiretapping and that the police were able to get certain telephone company employees to connect them in at the main frame in the telephone company with the telephones of suspected individuals, so that the police in the Intelligence Division could monitor these calls right in police headquarters.

One former racketeer employed his own wiretapper, whose principal duty was to protect his employer from police wiretaps and bugs. The wiretapper, however, developed a number of electronic devices which the racketeer used in his racket activities, as well as in his home to warn him of unexpected callers. One such device was a car trailer which the employer used on his own car, so that members of his organization could know where his car was at all times and in case of trouble would be able to get to the location without delay.

Police Chief Parker vehemently denies that police in Los Angeles are wiretapping. He is bitterly opposed to the ban against tapping, but he says he will obey it religiously, because "If that is the kind of protection against crime the community wants, that is the kind it's going to get." Parker believes that a police officer is a fool if he violates the wiretapping law. Parker says, however, that he knows that every federal agency in Los Angeles is wiretapping. He says that all state agencies, including the attorney general's office, are wiretapping, but that he cannot understand the philosophy

that law-enforcement officers should go ahead and get around the law in order to do their job. Apparently Parker expects that the restrictions against law-enforcement wiretapping might produce a shocking crime which the police would not be able to solve because of these restrictions, and that the public reaction might lead to legalized wiretapping.

The district attorney's office in Los Angeles has recently come under the direction of a new district attorney. The previous district attorney, who died in office, developed a complete sound laboratory and equipped it with the latest electrical surveillance devices.²⁶ This equipment was used principally for bugging of conversations. However, wiretapping was engaged in by the previous district attorney from time to time whenever a case indicated the need for such a procedure.²⁷ The technicians employed by the district attorney to use the electrical equipment were well trained in the art of wiretapping.

The new district attorney, a former judge, has not in the past favored law-enforcement wiretapping. He denies that the district attorney's office engages in wiretapping today. His first assistant district attorney is a former chief investigator for the United States Attorney, with substantial experience of the value of wiretapping for law-enforcement purposes, and is an ardent advocate of wiretapping by police and district attorneys.

The overhearing of conversations by means of a concealed microphone, commonly known as "bugging," has been a police practice in California since the early part of this century. As early as 1922 there is evidence of the availability of small electrical devices which could be concealed on the person and would transmit messages by wireless. The first newspaper publicity of this device involved a private use

for the purpose of obtaining stock news and transmitting it by wireless to a receiving station.

Bugging is much more frequently and openly engaged in by police than wiretapping. Unlike wiretapping, bugging is a lawful police activity. In fact, prior to 1941, anyone could conceal a microphone and overhear conversations without violating any statutory provision. Private detectives in California were as freely and openly using microphones as were police officers.

In 1941 it became apparent that private bugging was being used for political purposes and California legislators, in great fear of invasion of the privacy of their own conversations, rushed through a statute prohibiting private bugging.²⁸ This action was sparked by the disclosure that a microphone had been concealed in the hotel room of an assemblyman in Sacramento and the private conversations between the assemblyman and his wife had been recorded.²⁹

The 1941 statute prohibited the overhearing of a conversation in a building without the consent of the owner by means of an electrical device or "dictagraph," as such eavesdropping devices have been commonly called. Because of pressure exerted by the California Peace Officers Association, the legislature added a proviso excluding from the operation of the statute regularly salaried police officers acting under the written authority of the head of the department and in the interests of enforcing the criminal law.³⁰ The police understood this proviso to give them blanket authority to conceal microphones anywhere they desired.

Perhaps the most famous bug installed by the Los Angeles Police Department was that put in the new home of Mickey Cohen at 513 Morino Avenue in 1949 by Lieutenant Rudy Wellpott, Commanding Officer of the Administrative Vice Division. This was only one of a series of bugs installed by Wellpott on premises used by Mickey Cohen.³¹ The first had

been installed in Cohen's desk in his place of business shortly after a racketeer by the name of Max Shaman was killed by Mickey Cohen in the latter part of 1945.³² (Cohen was subsequently exonerated on a finding of self-defense.) A janitor found the microphone.

The finding of this microphone had caused Mickey Cohen to move to a luxuriously furnished club headquarters at 141½ North LaBrea. A member of Lieutenant Wellpott's squad installed a microphone in the office of this club.³³ A strong north wind, however, caused the wiring that strung across an alley to string and loop over a telephone wire, which was observed by Cohen's men. According to Lieutenant Wellpott, Mickey Cohen thought it was a telephone tap.³⁴ Another microphone was later installed by Wellpott's men in the same club quarters.

Cohen's next business venture was a men's store at 8685 Santa Monica Boulevard which he called "Michael's Haberdashery." Again, members of Lieutenant Wellpott's squad installed a microphone in Cohen's office.³⁵ The actual installation was made by a private technician. Cohen located this bug also, and Wellpott in a memorandum to his chief stated, "We have been stymied at practically every turn. Almost complete failure."³⁶

Later, Mickey Cohen purchased the house at 513 Morino Avenue, inside the city limits of Los Angeles. Wellpott wrote in a memorandum to his chief, "He was again in our hair. Therefore, careful plans were made for the installation of a microphone in this house."³⁷

The details of this installation were reported to the then Chief of Police, W. A. Worton in the same memorandum, as follows:

Lieutenant George Bowman informed me of Cohen's purchase. We met with Chief C. B. Horrall and definite plans for this operation were laid. Chief Horrall arranged for a leased

line and had a shielded copper line purchased. This shielded copper line was buried from the associated telephone company pole on rear property line to the "pre-amp" under the house. Lieutenant Bowman arranged for the telephone company to make the connection at their pole and installed such terminals to connect a listening device. Officer Charles Knapp of the crime laboratory installed a microphone in the casement (I was told) in the den. A very good job of microphone and pre-amp installation was made. It was a fine job of concealing. (It took some very sensitive electronic equipment to find it. This was admittedly done by J. Arthur Vaus.) Officer Earl Johnson from the Administrative Vice Squad was assigned to assist Officer Knapp to make the installation. The job was boldly done in broad daylight at a time when carpenters were not working. Those of us who were known to Cohen and his henchmen made no appearance on this job. We were exercising every care to keep the installation a secret. This we were extremely intent on doing after our disheartening experience on LaBrea Avenue and every job we had tackled so far in trying to procure evidence for the prosecution of Mickey Cohen or any of his henchmen.

Lieutenant Wellpott subsequently said that in this installation no private technician was used, but only trusted police personnel. The microphone remained in Cohen's house from April 12, 1947, to August 1, 1947, and then, with a new outgoing line, from August 1, 1947, to April 29, 1948. Since they were not using the private technician's modern equipment, police had to use an old disc-recording machine which produced very poor records. Six officers made handwritten notes while monitoring with earphones. The listening post was in a rented apartment about two and a half miles from Cohen's house. Two installations had to be made, because Lieutenant Wellpott learned that Mickey Cohen had been tipped off that a microphone had been concealed in his home. Wellpott obtained new leased lines

and removed the old line right from behind Mickey Cohen's house. However, he recalls that when this was done a dog barked and one of Mickey Cohen's men came out with guns. Wellpott's men hid in the bushes; then they jerked the line free and ran away. They were chased by passing police officers and caught, but when they identified themselves, the other police went on their way.

Jim Vaus, who had become dissatisfied with the meager financial returns of police employment, had accepted an offer from Mickey Cohen to find the bug in his home.³⁸ Having been informed that the bug was still there, and having even received copies of the transcripts containing his recorded conversations, Mickey Cohen desperately wanted to find the microphone. Vaus, by using his own equipment, located the police bug which had been built into the structure of the house.

Lieutenant Wellpott, who now is an avocado rancher in Southern California, says that Mickey Cohen was then determined to discredit him in every way possible. This became even more true, according to Wellpott, when Wellpott and one of his men, Sergeant Jackson, arrested Harold ("Happy") Meltzer, a lieutenant of Mickey Cohen, for illegal possession of a gun. Jackson had been one of the police officers working with Jim Vaus on the electrical surveillance of the Hollywood madam, who had accused Jackson of attempting to shake her down with the evidence he had acquired through the wiretap.

By the time of the Meltzer trial, Vaus had found the bug in Mickey Cohen's house, and the newspapers had received transcripts of the monitored conversations. On August 16, 1949, the Los Angeles newspapers carried excerpts from the police notes of these conversations. Wellpott is convinced that one of his men sold a copy of the transcripts to the newspapers. He says that he found some loose copies of the tran-

scripts in the car used by an officer assigned to his detail, and that they contained a sequence of conversations beginning just where the conversations reported in the newspaper ended.

The explosive situation reached a climax when Wellpott and Jackson were called to the witness stand in the Meltzer trial. Mickey Cohen had ordered Jim Vaus to appear at the trial with a tape recorder and to sit in the front row in clear view of the jury. Vaus sat holding his equipment and looking knowingly at the jury. Meltzer was acquitted. Vaus says today that he had no tape with him, just an empty tape recorder.³⁹

Wellpott and Jackson were indicted by the Grand Jury on charges stemming out of the investigation of the madam, and some high-ranking police officers resigned their posts under attack. The court, however, dismissed the charges against Wellpott and condemned the Grand Jury for indicting him without any evidence. Sergeant Jackson also was discharged later, when Vaus testified that he lied before the Grand Jury.⁴⁰ Vaus came forward and made these admissions after he had become a convert of Billy Graham, in an effort to make restitution for the wrongs he had done and begin his new life with a clean slate.

One revealing conversation picked up by the police microphone in Mickey Cohen's home was quoted in the third progress report of the Special Crime Study Commission on Organized Crime in California.⁴¹ Michael ("Mike") Howard was lecturing to Mickey's guests on racketeering philosophy:

It ain't gambling if you play gin and pick up pat hands or if you roll the right dice—it's business. You must wind up the winner every night. Every day you got to get that dough. I don't gamble. Don't be a gambler—be a businessman. Get the dough if you got to take it away from them. Knock them down and put a gag in their mouths. (Another man says it won't

work in a good joint.) The hell it won't—make it work. You got to figure and know what is going on. You go to the ball game and come back with some money—don't make a damn who wins, you win anyway. I damn well know it will work. A little guy named Ruffy does it all day long. He is a hustler, but for my money you can take those honest games and stick them in your _____. I don't believe nobody. I go to the races and sit there for five races, drink ice tea and bet on the last race because it's fixed and I know it. That's not gambling—that's business. To hell with this luck, every night you got to take.

Although California's constitution prohibits unreasonable search and seizure and requires the issuance of a search warrant on the showing of probable cause before a search can be made, the police preferred to believe that the act of 1941, permitting police use of concealed microphones, gave them the right to enter any premises, whether it be a home, store, or hotel room, without first obtaining a search warrant. Literally, whenever the police suspected an individual of being connected with the commission of a crime, and the case was worth it, trained police technicians, or private specialists employed by the police, would pry open windows, pick locks, or by some ruse gain entry to the home or business place of the suspected individual and plant a microphone for the purpose of overhearing his conversations. By means of a leased wire from the telephone company, these planted microphones could be connected to telephone lines which would be drawn in to a single listening post where a great number of conversations in different parts of the city could be monitored at one time and in one place.

This was by no means a secret activity on the part of the police. The Los Angeles Police Department was quite willing to talk about it, and in the prosecution of cases resulting

from arrests made in this way, Los Angeles police officers testified in court as to the various means they used to gain access to a room and the manner in which they installed a microphone.

This was true to such a degree that police in other parts of the state, who are more secretive about their bugging activities, were apprehensive of public reaction which might lead to restrictions of police activity.⁴² Their fears were well founded, for the public exposé of police bugging practices finally did produce a change in California law restricting police activity. This was the *Cahan* decision,⁴³ which brought a new rule of evidence to California. Throughout California police blamed the Los Angeles Police Department for bringing on what they considered an unreasonable law. If the Los Angeles police had not been so promiscuous in their use of bugs and had not talked so loudly about it, they say, there would have been no *Cahan* decision.

But before we consider the *Cahan* decision, let us see what this new rule of law was about. We first must understand that the *Cahan* case was a child of the *Irvine* ⁴⁴ case, which in turn was a child of the *Rochin* case.⁴⁵ So we must start from the beginning, which was not so long ago. *Rochin* occurred in 1949.

The *Rochin* case has nothing to do with wiretapping or bugging. It was a narcotics case in which the police obtained evidence in a most unusual way. When they broke into *Rochin's* room, he swallowed two capsules of morphine to prevent the police from seizing them as evidence. The police immediately forced *Rochin's* mouth open and attempted to retrieve the capsules before he swallowed them, but without success. *Rochin* was then handcuffed and taken to a hospital, where under police orders a doctor forced an emetic solution through a tube into *Rochin's* stomach against his will. This produced vomiting, and in the vomited matter were found

the two capsules containing morphine which he had swallowed.

The Rochin case was quickly labeled "the stomach pump case." Under the California rule of evidence then existing, which permitted evidence to be admitted in court no matter how it was obtained, so long as it was otherwise relevant and material, California courts upheld the legality of Rochin's conviction. The Supreme Court of the United States reversed the conviction on the ground that it had been obtained by methods that offended the due process clause of the fourteenth amendment of the United States Constitution. Mr. Justice Frankfurter, in the majority opinion, described the activity of the law-enforcement officers in the Rochin case as "conduct that shocks the conscience."

It should be pointed out that the great majority of the states in this country, approximately thirty-three to date, follow the rule of evidence which pertained in California in 1949. Shortly prior to the Rochin case the Supreme Court of the United States had decided *Wolf v. Colorado*,⁴⁶ holding that this rule of evidence does not violate the fourteenth amendment.

Having received its first warning from the Supreme Court of the United States that that Court would not tolerate police action which shockingly violated the privacy of a suspect, the Los Angeles Police Department two years later went after a man named Irvine, who it strongly suspected was engaged in illegal bookmaking. While Irvine and his wife were absent from their home, police officers had a locksmith go there and make a door key. Two days later, again when nobody was home, police officers and a private technician used the key they had made to enter the home, and a concealed microphone was installed in the hall. The private technician bored a hole in the roof of the house, and wires were strung to a neighboring garage, where the conversations picked up

by the microphone were monitored. When poor reception was noticed by the monitoring police officers, the technician suggested that they were probably getting interference from a fluorescent lamp, and two further entries were made into the house, at different intervals, to relocate the microphone, once in Mr. and Mrs. Irvine's bedroom, and later in their bedroom closet. On the basis of the conversations overheard by the police officers through this microphone, Irvine was arrested and convicted.

The case was reviewed by the Supreme Court of the United States and Mr. Justice Jackson, a former attorney general of the United States, delivered the majority opinion, stating:

That officers of the law would break and enter a home, secrete such a device, even in a bedroom, and listen to the conversation of the occupants for over a month would be almost incredible if it were not admitted. Few police measures have come to our attention that were flagrantly, deliberately, and persistently violating the fundamental principles declared by the Fourth Amendment as a restriction of the federal government that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the person and thing to be seized."

The Court, however, affirmed the conviction, on the ground that the only question before it was the constitutionality of the admission of illegally seized evidence, and stated that it had already held in *Wolf v. Colorado* that a state does not violate the fourteenth amendment by permitting illegally seized evidence to be admitted in court against a person charged with crime. Mr. Justice Jackson, however, at the end of his opinion, suggested that the Supreme Court

turn the record of the case over to the attorney general of the United States for the purpose of considering prosecution of the police officers involved under the Federal Civil Rights Act.

Mr. Justice Black and Mr. Justice Douglas dissented on the ground they thought the Los Angeles police had violated Irvine's privilege against self-incrimination guaranteed by the fifth amendment. Mr. Justice Frankfurter and Mr. Justice Burton dissented on the ground that they believed the police activity in the Irvine case was no better than the police activity in the Rochin "stomach pump" case, and that Irvine's conviction should be reversed on the basis of the principles enunciated in the Rochin case.

No federal prosecution was begun against the police who had invaded Irvine's home.

The only thing that concerned the police of Los Angeles in the Irvine case was that the conviction had stood up. Thus, without regard to the Supreme Court's emphatic disapproval of their bugging procedures, the Los Angeles police went ahead and did the same thing all over again, and thus was born the Cahan case.

Cahan, like Irvine, was suspected of being a bookmaker. Two microphone installations were made. One night, about 8:45, police officers entered a house used by Cahan's brother through a side window of the first floor and installed a microphone under a chest of drawers. Again, as in *Irvine*, a nearby garage was used to record and monitor conversations picked up by the microphone.

A second installation of a microphone was made in the home of the bookkeeper of the Cahan organization, after a constant surveillance of this house indicated that it was a frequent meeting place for the Cahan brothers and the bookkeeper. The method of gaining entry in this house was different. The testimony concerning the method of this

latter entry never got into the record of the Cahan case, because the trial court sustained the objection of the district attorney to the police officers' testimony concerning these facts. However, in the affidavit of Chief of Police William H. Parker, attached to the State's brief in the Cahan case before the Supreme Court of California, Parker describes this method of entry as follows:

The investigating officers approached the owner of the premises and enlisted his cooperation. At the request of the officers, the owner, who lived in another county, wrote a letter to his tenants, stating that the time had arrived to make an annual termite inspection and stating that a termite contractor would call at a certain time. The police officers then hired a termite contractor, sufficiently familiarized themselves with the nature of his work so that they could plausibly appear to accompany and assist him, and went to the Glenville address. They were admitted by the bookkeeper. He, his wife and child were present in the building while the inspection was made and in fact engaged one of the officers in conversations about aspects of termite work. (Incidentally, they discovered that termite damage estimated at \$750 actually existed.) While in the house, a listening device was secreted in the room which had been previously observed to be equipped with office furniture. There was no other kind of furniture in the room.

Chief Parker stated that a total of 1440 man hours of work were expended at each installation, for a total of 2880 hours.

Subsequent to the installation of the microphone and after evidence was obtained incriminating the defendant, the police made raids on other places and obtained further evidence. These raids were made without warrants, and police gained entry by forcible means.

Cahan and fifteen other persons were convicted of book-

making charges on the basis of this evidence. His case never did get to the United States Supreme Court. The Supreme Court of California, mindful of the language of the Supreme Court of the United States in the Rochin case and in the Irvine case, struck down the convictions in the Cahan case. In so doing, the Supreme Court of California reversed the long-standing California rule of evidence which permitted illegally seized evidence to be admitted in criminal cases, and held instead that evidence obtained in the manner of the Cahan case was not admissible in criminal cases in California, and that a conviction based on such evidence would have to be reversed.

In discussing police behavior in the Cahan case, the Supreme Court of California in the majority opinion stated:

The forcible entries and seizures were candidly admitted by the various officers. For example, Officer Fosnocht identified the evidence that he seized and testified as to his means of entry:

. . .

"I forced entry through the front door and Officer Farquarson through the rear door."

. . .

Officer Scholcher testified that he entered the place where he seized evidence "through a window located—I believe it was west of the front door. . . ."

"When you tried to force entry in other words, you tried to knock it (the door) down? Is that right?"

"We tried to knock it down, yes, sir."

"What with? A shoe, a foot. Kick it?"

"Tried to kick it in, yes."

"Then you moved over and broke the window to gain entrance? Is that right?"

"We did."

Officer Sherrer testified that he gained entry into one of the places where he seized evidence by kicking the front door in.

He also entered another place, accompanied by officers Hilton and Horral, by breaking through a window. Officer Harris "just walked up and kicked the door in" and gained entry to the place assigned to him.

The Supreme Court then commented:

Thus, without fear of punishment or other discipline, law enforcement officers, sworn to support the constitution of the United States and the constitution of California, frankly admit their deliberate, flagrant acts in violation of both constitutions and the laws enacted thereunder. It is clearly apparent from their testimony that they casually regard such acts as nothing more than the performance of their ordinary duties for which this city employs and pays them.

Police Chief Parker has claimed that there has been a definite increase in crime as a result of the *Cahan* decision. In a statement filed with a legislative subcommittee on January 11, 1956, Parker claimed that in the period following the *Cahan* decision, from May 1, 1955, to the end of that year, 5714 crimes occurred above what was to have been expected from the trend established prior to May 1, 1955. Among these crimes were 481 robberies, 1403 burglaries, 2580 larcenies, and 1250 auto thefts. Parker indicated that for the crime of robbery alone the figure was 31.7 per cent higher than the normal trend would have indicated. He said that the increase in burglary was 13.9 per cent, larceny 11.5 per cent, and auto theft 30.9 per cent. Parker stated, "It is entirely probable that these 5714 crimes would not have occurred if the underworld had not been aided by the exclusionary rule."

Other law-enforcement officers, however, especially those in the prosecutor's office, have stated that it is highly unlikely that a change in the rule of evidence would have any effect on the increase of the commission of crimes like rob-

bery, burglary, larceny, and auto theft.⁴⁷ But most police agencies in California lament the *Cahan* decision. With a number of exceptions, later set out by the Supreme Court of California, police agencies realize now that they will have to get a search warrant before they make a search. Prior to the *Cahan* decision, few, if any, search and seizure warrants were ever requested. In commenting on the practice prior to the *Cahan* decision, one police officer innocently said that, although he knew the law of California required a search warrant prior to a search, "It never mattered before, because the evidence got in anyway."

The *Cahan* decision led to an investigation by a seven-man Senate Judiciary Committee (the Regan Committee) of the California legislature.⁴⁸

Prior to conducting public hearings, the committee's staff held a number of private interviews with persons throughout the state who were reputed to have intimate knowledge of law-enforcement and private wiretapping and bugging. Also the committee's staff collected the testimony and reports of legislative hearings of other states and of the federal Congress.

The public hearings themselves were not productive of many new facts. Fifteen witnesses were called. Only a few of these gave testimony concerning specific practices. The first witness called before the committee was Russell Mason, the private technician used by the Los Angeles Police Department prior to Chief Parker's administration and presently used by the San Francisco Police Department. Mason testified⁴⁹ that he was employed by a great number of law-enforcement officers in California and throughout the country. He said that between 1940 and 1956 he had bugged five hundred private residences for police officials in California. He described these installations as put in private

homes, apartments, hotels, and motels "from a tenement to a mansion in Beverly Hills."

In describing his method of entry, he testified:

Most of the time in police work the entry was not made; in other words if the door was locked the door was taken care of so that it was opened by the law-enforcement people by the time I arrived to put the equipment in. And once in a while I would have to climb underneath the house or up into an attic. Quite often it would be so that it would be necessary to climb up in an attic, obtain entrance through a crawl hole in the roof, maybe through a ventilator in the basement, or varied different means, such as an ordinary burglar might feel was the easiest way to get in.

Mason credited the *Cahan* decision with almost completely eliminating his police assignments. He said that his principal police work today involved the use of the wireless microphone. This, he said, was usually the case when an undercover police agent had arranged to buy drugs from a suspected drug peddler. The undercover agent would wear the wireless microphone, and Mason would be a block away in a specially equipped truck, where he could record the conversation.

Mason revealed that he was the private technician employed by the police department to install a microphone in the Irvine case. In his testimony, he gave a detailed account of how he gained entrance and how he set up the microphone.

For a ten-year period between 1940 and 1950, Mason said, he was also employed by the district attorney's office in Los Angeles, and for that office, he said, he bugged as many as seven premises a week. During this period, he claimed, very little electronic surveillance was conducted by police outside of his own work. He explained that the district attorney's office had only some antique equipment and that this

was also the case with the sheriff's office and the police department. Later, he said, the law-enforcement departments began to acquire modern equipment, and ultimately the police department in Los Angeles became independent of private help and set up its elaborate modern sound laboratories in the new police building.

In addition to law-enforcement activity, Mason testified, he did some bugging for the medical board in California. The medical board contacted him through the attorney general's office for the purpose of having him install a microphone in the office of a doctor who had lost his license. The medical board members wanted to determine whether the doctor was continuing to practice. Mason said he did not have to go into the premises of the doctor to do the job. He bored a hole through the wall of the office next door, leading into the doctor's office, put the microphone next to the hole, and caught all the conversation.

Mason recalled that another state board that employed him to use a microphone was the Board of Health. The board was investigating one of its own members, who was supposedly shaking down a restaurant owner for permitting him to operate his restaurant illegally. The restaurant owner reported it to the head of the Board of Health, and Mason installed a microphone which recorded conversations corroborating the shakedown charges.

Mason admitted that a man without integrity doing this kind of work could use his equipment for blackmail purposes. As an example of this he told of how a young lady in Los Angeles invited a director of a private Hollywood school to her apartment, after she had secreted a recording machine under her couch. She recorded his amorous intentions and later began to blackmail him. The school director, however, went to the police department and the district attorney's office, and the young lady was arrested. How-

ever, she was acquitted when she demurely testified that the recording had been a joke and that she had actually expected the school director to marry her.

Mason testified that in his private business he obtains his work primarily through lawyers.

Five witnesses were called who were in the business of manufacturing or distributing electronic equipment used for eavesdropping purposes. These witnesses all claimed to sell their equipment to law-enforcement agencies except in the case of common recording equipment or microphones, which were generally available in radio or electrical stores. They each described the small microphones and transmitters, giving the range of this equipment and its limitations. These descriptions are embodied in the technical section of this book and need not be repeated here.

One of these equipment suppliers, Lee Jones⁵⁰ of the Fargo Company, admitted that microphones could be secreted in such a way that they could not be detected. He said an expert, given sufficient time, could probably find a bug, but added, "You may have to take the entire building down."

Jones also testified that he had installed in police departments throughout the state of California concealed microphones and recording equipment for the purpose of recording interviews between police and prisoners. He said that it was his opinion that these microphones were never used to overhear conversations between attorney and client. But he said that he also knew that microphones were installed in the jails to overhear the conversations between visitors and prisoners. Jones commented significantly that since the *Cahan* decision, the California police have had to rely more on standard crime-detection techniques other than electronic surveillance. He said, "Before the Irvine and Cahan decisions if you wanted to find certain information you put a

'bug' in and listened. Now they actually require a great deal more police work, much more surveillance, many more men, because they can no longer install a microphone to listen to conversations."

Jones testified that the electrical eavesdropping equipment now possessed by the police is not able to pick up conversations in a room unless an installation is made inside the room. He said the police own no equipment with which they can stand outside a place, point a device, and pick up a conversation inside.

Representatives for the telephone company in Los Angeles testified ⁵¹ that the telephone company has never permitted police wiretapping and that if a police officer were found tapping a phone, he would be arrested. However, the telephone company witnesses testified that they never had found a police officer tapping a wire. They indicated that a great number of complaints are received concerning wiretapping and that these complaints multiply when there is publicity in the newspapers concerning wiretapping. In the course of the year 1956, from January to October 31, one of the witnesses testified, there were about 330 complaints. Only one or two of these were found to be actual wiretaps. In one case an arrest was made, but the jury disagreed and the defendant was acquitted.

Telephone company employees also testified that a rigid system of control exists in the Los Angeles telephone company, whereby only authorized persons can obtain the pair and cable numbers of a particular telephone.

When pressed by the committee as to whether or not there was actually a great deal of wiretapping going on in California, one telephone company witness, the chief special agent, testified:

Now in election years some politicians think their wires are tapped, and we handle complaints from union people and

everyone else, doctors and dentists, in all types of life. But there is I'd say a small percentage of wiretapping because I don't think there's enough competent engineers to tap a wire. I think our repairmen and switchmen who are always on the alert for anything like that would know about it, and in the twenty-nine years that I have been in charge of these investigations, I only myself recall one good wiretapping case and that was about twenty-seven years ago, and Ernie Roll, who passed away recently, he was deputy district attorney prosecuting a case, and at that time Ernie was looking for prior cases, leading cases and could not find any.

The chief special agent was also asked whether or not the company got many complaints concerning the recording of telephone conversation without sending out a beep tone as required by the Federal Communications regulations. He answered, "No, sir."

The telephone company witnesses testified that off-the-premises extensions do not come under the security or special agents' division, but under the commercial section, and that this was a common practice. This, of course, is a form of wiretapping which requires the subscriber's consent.

Somewhat different testimony⁵² was received from the staff supervisor of the Pacific Telephone and Telegraph Company, who testified that field investigations have shown numerous cases of wiretapping in California. He said that he had been out on at least fifty cases himself, but in only a few of these did he actually find a completed wiretap. In one of them he traced the line to a jealous husband sitting in a garage, who was arrested in the act of listening in with a crude device on his wife's line. However, in most cases he found only the stubs of the wires attached to an intermediary telephone line connection. He indicated that in one instance he found a quarter-mile of wire strung up a hill with nothing at either end of it. He said that on numerous

occasions, he found telephones underneath houses or in basements of apartment houses.

Another witness before the committee was Chief William H. Parker⁵³ of the Los Angeles Police Department. Parker testified that prior to the *Cahan* decision, he had interpreted Section 653(h) of the act of 1941, which permitted police bugging, to authorize the police with the written approval of the head of the police department to enter premises without the consent of the occupant and to install a microphone. He said that during the time he was chief of police only regular police officers engaged in this activity and that he did not employ a private technician. He said that general order No. 56 of the Los Angeles police, which he issued on August 24, 1950, dealing with the police use of dictaphones, read as follows:

Dictaphone installations other than those on police department premises must have the approval of the Chief of Police prior to installation.

Dictaphone installations on police department premises should have the approval of the concerned bureau commander and/or director or commander of the administrative intelligence section prior to installation. Concerned commanders will submit a confidential written report to the adjutant of the chief upon the occasion of any dictaphone installations, removals or other change of status of installations under their control. Reports will include the following:

- (a) Person authorizing installation and date of authorization.
- (b) Reasons therefor including brief statement of objectives.
- (c) Names, initials and serial numbers of all personnel assigned to listening posts.
- (d) The probable duration of installation.
- (e) Name, initials and serial number of person who will be responsible for the compilation of notes, number of

copies to be made, persons who will get copies and security arrangements pertaining thereto.

The commander of the detective bureau will instruct the personnel of the investigative division to submit a confidential written report on completion or removal of the dictaphone installation in which they have participated to the commander and/or director concerned with a copy to the chief and said commanders will submit weekly a confidential written report to the adjutant of the chief, including a digest of usable information obtained from dictaphone installation of the preceding week.

Digest of information obtained for translations and their recordings will be handled as classified confidential matter and will be secured in a security depository under police jurisdiction and directed by the responsible bureau chief with a confidential report of distribution and disposition to the adjutant of the chief.

Unauthorized connections with any telephone wire or equipment as defined in Section 640 of the Penal Code of California are prohibited.

Special Order No. 34 dated August 29, 1949, is rescinded.

Parker testified that while he was chief, he had no knowledge of any leaks of information obtained with a microphone. However, before he became chief of police, he knew that unauthorized persons were able to obtain transcripts of recordings made by police bugs. He recalled that Mickey Cohen was able to do this.

Chief Parker was questioned concerning the sound laboratory he had installed in the new police building, and he emphatically denied that this equipment was used to overhear conversations between attorney and client. He stated that one of the principal uses of the equipment was to record interviews between police officers and a suspect, especially during the taking of a confession. A discussion took place between Parker and the chairman of the committee

concerning the need for court supervision of police bugging practices, since, according to the chairman, innocent persons and innocent establishments might be involved. Parker took exception to this and said, "We are not interested in what goes on in innocent people's homes; we are too busy with the criminals." He added, "I have no knowledge of the police department ever being a party to the conviction of an innocent man."

The chairman replied, "We are not talking about conviction. What we are talking about is information that would be obtained from people in the privacy of their homes."

Parker answered, "We have worlds of information about people we have not obtained by electronic devices. What's the difference how we get it? We've got it. It's confidential; it can only be used for the purpose of criminal prosecution."

Parker was asked whether the police department had engaged in the interception of conversations between husband and wife. He answered:

I won't say that that hasn't happened. It could happen if such conversations occurred in areas that were under surveillance at the time we engaged in that type of activity. . . . But we are not a curious group of people, in the sense of the word, because we don't have time, and if we get information that is of no value to us, then it is erased on the tape.

Although Parker agreed that he would not use a microphone in a jail to overhear conversations between a defendant and his attorney or between a prisoner and a priest or minister, he said he would not extend the immunity to communications between a husband and wife while a husband or wife was confined in jail. He said:

No, I wouldn't go that far, because many times they're both involved in the situation and as long as it's in jail it is not the same kind of thing—it is not the home of either one of them. It is just a temporary place of custody under the control of whoever the law-enforcement officer is in charge. I think that is a different situation because there are, as you know under the law, times when a wife can testify against her husband. In cases involving juveniles—also in cases where she is a victim of the crime, so this isn't the same type of confidential relationship spelled out between husband and wife as it is between priest or confessor, between attorney and client.

He said that in the city of Los Angeles there are microphones located in the jail for the purpose of picking up conversations between the accused person and the police officer. Recordings are made of these conversations without the knowledge of the accused person.

Adolph Alexander, formerly chief deputy district attorney of Los Angeles, testified that he disagreed with Chief Parker on the police policy of bugging conversations between husband and wife. He said that the district attorney's office when he was in it never approved of this conduct, and rejected any case which was based on such a surveillance.

Alexander was asked whether he thought the *Cahan* decision hampered law enforcement or caused an increase in crime, and he answered:

I would say this, Senator. I cannot see the relationship between the Cahan case and the incidence of crime. The Cahan case characterized a rule of evidence which comes into play after the commission of the crime, while we are in court. I cannot see how the Cahan case has anything to do with the rise of the crime rate. I believe the crime rate or the rise in the crime rate is the first primary function of the police de-

partment. The primary function is the suppression and prevention of crime and nobody can convince me that the Cahan case is the cause of the increase of the crime rate in this county.

Upon the conclusion of the hearings, the Senate Judiciary Committee prepared a report ⁵⁴ which reviewed the equipment used by eavesdroppers, and the private and official use of the equipment. The committee concluded that private eavesdropping had gone far out of bounds, and that even the recording of one's own employees on one's own premises should not be allowed without the consent of the employees or without notice being given that the recording was being made. The committee further concluded that law-enforcement officers should not be given the right to wire-tap. Further, the committee reported:

As to the use of dictographic equipment the committee concludes that the effect of the Cahan decision by the California Supreme Court has been effectively lived with by peace officers, and, overall, beneficent for the general community. Law-enforcement effectiveness has been increased by assuring that the activities of the police is kept in consonance with the dominant convictions of the community concerning the protection of private premises. It must not be forgotten that in a democratic society, public respect and acceptance of the law is the latter's ultimate and strongest possible sanction. In the light of the Cahan decision, the committee recommends that legislation be enacted explicitly making it an offense for any person, whether for a public or private purpose, to trespass private premises, to install or use sound surveillance equipment. Under the conditions of modern life that interdiction should protect the person in a hotel room as much as in his permanent residence, and those in lodging houses, apartment houses or office buildings, as much as anywhere else.⁵⁵

Bills were drafted and introduced in the general assembly to put in legislative form the conclusions of the investigating committee. Some bills were completely prohibitive of police use of bugging equipment. Some allowed police bugging under tight restraints. All the bills aimed at changing the law with regard to police bugging in California.

Because of these bills on the one hand and on the other the feeling of the police that additional laws were needed to aid them in their investigations, the Peace Officers Association of California joined with the District Attorneys Association and the Sheriffs Association of California to influence legislative action. They prepared an impressive booklet which set out in brief form all the proposed law-enforcement bills. Under each bill, they printed in bold type "approved," "approved with amendment," or "disapproved." The only bill relating to bugging which the Law and Legislative Committee of the Peace Officers Association of California marked "approved" was one restricting private bugging which they had been able to amend to include a proviso excluding law-enforcement officers from the operation of the bill. This was very little different from the then-existing law.

A very active lobbying program was undertaken by the law-enforcement organizations in Sacramento. District attorneys and police chiefs were assigned to meet with legislators during the legislative session and to persuade them to vote against the bills the law-enforcement organizations disapproved and to vote for the bills they approved.⁵⁶ One police chief admitted that he had told a senator on the judiciary committee investigating police wiretapping and bugging that if he wanted to get ahead politically, he had better stop interfering with law enforcement.⁵⁷ The police chief indicated that he was speaking for the combined forces of

the Peace Officers Association, the District Attorneys Association, and the Sheriffs Association of the state of California.

The only bill that was finally enacted relating to police bugging was the bill which the law-enforcement organizations had marked "approved." Staff members of the Regan Committee privately admitted that they had censored their own report and had not pushed for police restrictions because of the powerful influence of the law-enforcement groups. The governor vetoed this bill on the ground that he did not believe it was sufficiently restrictive of police bugging activity. This maintained the status quo, with the 1941 law permitting police bugging.

Today in Los Angeles the use of microphones is routine in the district attorney's office and in the police department.⁵⁸ Under the *Cahan* decision, law-enforcement officers, if they wish to use the overheard conversations in evidence, must refrain from illegally entering the premises involved.

There is an elaborate bugging installation in the new police building itself. On the seventh floor of the building is the scientific sound laboratory mentioned above. This laboratory was constructed by police experts themselves and makes use of the latest Ampex recording equipment. There are sixty listening posts throughout the building. These are in commanders' offices, in detective interrogation rooms, in lie-detector rooms, and in other areas where it is desirable to overhear conversation. In the sound laboratory on the seventh floor, the operator can switch in to any one of these sixty listening posts and record a conversation on magnetic tape. In the commanders' offices, however, the microphone will not pick up conversation unless the commander himself turns it on. In all the other listening posts the sound laboratory man can switch the microphone on and off without the knowledge of the police officer to whom he listens.

The laboratory man conducts the surveillance only when directed to do so by superior officers. Several listening stations can be monitored at one time. The latest type of filtering equipment has been added to the system, so that clear recordings can be made.

The district attorney's office in Los Angeles possesses the latest equipment for bugging, including wireless transmitters.⁵⁹ The district attorney's office filed statistical information with the Senate Judiciary Committee reviewing police wiretapping and bugging, in which it reported that between 1951 and 1955 the office installed an average of about ten bugs a year, 90 per cent of them, it was estimated, with the permission of the person owning the premises.

Bugging is also a constantly employed law-enforcement practice in San Francisco.⁶⁰ Perhaps the most noteworthy case where law-enforcement officers used a bug was the Tarantino case.⁶¹ In the early part of the 1950's, Tarantino was the editor and publisher of a Hollywood scandal magazine. He used this magazine as an extortion device to obtain money from California celebrities. His scheme was to approach prominent persons and insinuate that he had scandalous material concerning them which he was planning to use in his magazine. He would indicate, however, that the person could buy an advertisement in his magazine and that it was a policy of the magazine not to print scandal stories about its advertisers. The first magazine advertisement would cost \$200, and then the price would go up. The "advertiser" would eventually be charged huge sums. Tarantino finally applied his scheme to the mayor. The mayor called upon all the local law-enforcement people to drop everything and get Tarantino. The district attorney used Russell Mason, the private technician, to install a bug in Tarantino's office for the purpose of picking up Taran-

tino's conversation over the telephone from his side of the line. Tarantino was arrested and convicted of extortion. His case was reviewed by the California Supreme Court shortly after that court had handed down the *Cahan* decision. Although on the basis of the *Cahan* decision the court held that the transcripts of the conversations obtained by means of a microphone installed in an illegal entry could not legally be used to support the conviction of Tarantino, the court did find independent evidence in the record to justify the jury's verdict of guilty and therefore affirmed the conviction.

Law-enforcement officers in California believe that the Tarantino conviction was affirmed because of the seriousness of the crime, despite the placing of a microphone after an illegal entry, whereas *Cahan* was reversed because this type of tactics was employed in a gambling investigation.

The extent of the bugging in the Tarantino case and the manner in which the evidence was produced in court are illustrated in the majority opinion as follows:

The recordings totaling 198 reels of tape or approximately 500 hours of listening time, were edited by the district attorney and the police, arranged according to subject matter, and re-recorded in part on composite tapes. The district attorney introduced sixty selected excerpts that constituted corroborative evidence of the testimony of the prosecution's witnesses.

The district attorney's office in San Francisco frequently uses small pocket recorders in investigations which it conducts.⁶² This is very often done for self-protection, so that a record is made of the actual activity of the investigating officer. Also, where undercover women operators are sent out on abortion cases to meet suspected doctors, they carry small pocket recorders. These pocket recorders are also used

in order to obtain evidence against an extortionist or black-mailer.

In the district attorney's office itself, there are five or six microphones in different rooms.⁶³ A listening post is maintained in one room where several recorders can be operated by a flick of a switch.

In both San Francisco and Los Angeles, microphones are frequently used in jails and prisons to overhear conversations between the prisoners and between prisoners and visitors.⁶⁴ One law-enforcement officer recalls that a suspected murderer who was imprisoned in the city jail was expecting a visit from his girl friend.⁶⁵ The head of the homicide detail of the police department thought it would be a good idea to put a microphone in the cell where he would be receiving the visitor. A private technician was employed to install this microphone. The only available room was a room generally used by lawyers to interview their clients. The microphone was installed that night and left unconnected. The night guard, who was unaware that the installation had been made, allowed a lawyer to interview a client in this room. Before speaking to his client, the lawyer searched the room, found the unconnected bug, and went directly to the newspapers and told them about it. Police believe that someone had tipped off the lawyer prior to his going into the room.

The chief of police at the time did not know that the homicide detail had installed a microphone, and claimed that there was no bug in the room. When he learned what had happened, he called the newspapers and told them not to report the story, since a visit from the girl friend of the alleged murderer was expected the following day, and a disclosure of the bug would ruin the chances of overhearing incriminating evidence. However, the newspapers reported the incident. All ended well for the police department. A

conviction was obtained regardless of the failure to obtain a recording of the prisoner's conversation in his cell.

In 1948, an installation was made in various offices in the State Building in Los Angeles, including the attorney general's office, which was at times called a wiretap and at other times called a bug, but which was admittedly authorized by an assistant attorney general.⁶⁶ The installation was made by the private technician, Russell Mason. Mason was arrested and charged with wiretapping, but convicted only of making an unauthorized connection to telephone lines and given a suspended sentence of thirty days. The attorney general had stepped in and indicated to the court that Mason's activity had been authorized. However, the special assistant attorney general who had employed Mason was fired.

The newspapers hinted that the attorney general had sought electronic surveillance of various State Building offices for the purpose of discovering information in the possession of the special crime study commission which was at that time conducting an investigation of the attorney general's office itself.

Mason said that he never put a wiretap in, but that he was hired by a deputy attorney general to install several listening posts in the State Building and to connect them to leased wires, which ran to a room in an office building nearby where he could monitor the conversations picked up by the microphones. He said the purpose of the installations, according to the explanation given him, was to record interviews and the obtaining of statements for the convenience of members of the attorney general's staff and certain department heads. Mason said that the installation was discovered when one of the attorney general's assistants picked up a phone in one of the rooms and heard conver-

sations taking place in one of the hearing rooms. Mason pointed out that this proved the installation certainly could not be a wiretap, since a telephone wiretap would not permit the hearing of conversations in another room by merely picking up the receiver of a telephone. One explanation, of course, might be that the telephones were both bugged and tapped, and that the telephone used by the assistant attorney general who discovered the installation had been intended to be a monitoring phone.

John Fearnley, supervising special agent of the telephone company in Los Angeles, testified ⁶⁷ before the Regan Senate Judiciary Committee that he answered a complaint from a member of the attorney general's staff that something was wrong with the telephones in the attorney general's office. Fearnley said that he searched the attorney general's office from one end to the other and couldn't find anything wrong. He said, however, that about 1:00 A.M. he picked up a telephone and heard someone sweeping in another room. When the room was searched, a microphone was found. He explained that in order for the telephone he had been using to pick up the sweeping of a janitor on another floor, it had to be connected with telephone cables. Fearnley said that he and another telephone company technician crawled in between the floors and went up, starting between the first and second floors. As they went on up, they found a cable where the sheathing on the outside was cut and some wires were coming in from that particular cable. They traced these wires and found that they led to recording devices in the Philharmonic building at Fifth and Olive Streets. All the wires connected with the telephone keyboard system in the attorney general's office, and at the Fifth and Olive Street listening post there was a recorder for every line coming out of the keyboard.

The police departments in California are no different from the police departments in other parts of the country. They, too, claim that the informer is an essential part of police activities. In addition to the inducements offered informers, such as protection against prosecution or heavy penalties, some police departments have made cash payments to them for their information. Sometimes dope is given to a narcotics addict in order to induce him to give information concerning his supplier of narcotics.⁶⁸

Cognizant of the fact that ordinary informers make poor witnesses and that their information is apt to be unreliable, police departments in California more often rely on the use of police officers as undercover agents. In Los Angeles, the Intelligence Division claims to have used police undercover spies in narcotics investigations for the past fifteen years. Undercover police officers have been used to invade the organizations of bookmakers, to obtain evidence against abortionists, and to investigate organized prostitution.

Police departments in California also make extensive use of photographic equipment for eavesdropping purposes.⁶⁹ They meet the problem of how to observe without being seen by using high-powered telescopic lenses on still, motion-picture, and television cameras. The Los Angeles Police Department is one of the first police departments to use closed-circuit television in criminal investigations.

Two-way mirrors are installed in the police department headquarters, as well as in the district attorney's office.⁷⁰ One interrogation room in the Los Angeles Police Department building demonstrated the employment of a number of different eavesdropping devices to cover one specific type of surveillance. While prisoners are left alone in an interrogation room, police observers watch them through a two-way mirror, take pictures through this mirror with a number of different types of cameras, some automatically triggered, and

record the conversation of the prisoners which is picked up by a microphone concealed in the interrogation room itself.

Some of the electronic equipment used by police for eavesdropping purposes is built by police technicians, but for the most part this equipment is purchased from any of a number of local manufacturers or distributors. The small pocket recorders can be purchased anywhere in California from a great number of radio and electrical stores. In addition, general department stores and office supply houses are now becoming distributors of these pocket recorders. Other types of electrical equipment, such as tape recorders, microphones, headsets, and induction coils, can also be purchased from a wide variety of radio and electrical stores.

Most of the manufacturers specializing in police equipment claim that they sell their equipment only to authorized law-enforcement officers except in the case of equipment which is generally available anyhow. There is no legal requirement that these companies restrict their sales in this way, and, as a matter of fact, we discovered that private detectives and other persons not employed in law enforcement do not find it too difficult to purchase the equipment supposedly available only to law-enforcement people.

It is significant that, in addition to manufacturing, supplying, or distributing this equipment, some of the suppliers have also been willing to install the equipment for law-enforcement officers on special assignment.⁷¹ Thus, they have added to the ranks of private technicians available for wiretapping or bugging purposes.

Private eavesdropping is almost totally prohibited by California law. Telephone wiretapping has been a crime since 1905 and bugging since 1941. The only legal use that a private investigator may make of a listening device or re-

cording machine is in the recording of his own or his client's conversations, on the telephone or elsewhere. The use of the pocket recorder was proscribed in the most recent legislation on the subject in the summer of 1957, but the governor vetoed this bill on the ground that it didn't extend its restrictions to police officers.

Despite these penal laws, California is perhaps one of the most active areas for private wiretapping and bugging in the country. Since 1861 when the first telegraph wiretapping bill was passed and 1905 when the first telephone wiretapping bill was passed, there have only been a handful of prosecutions for violation of these laws. In the last twenty years, there have only been two or three prosecutions of private investigators on wiretapping or bugging charges, and only one conviction. In the case of the one conviction, that of Russell Mason, wiretap charges had been reduced to the charge of making an unauthorized connection, and the sentence was thirty days, suspended.

Perhaps the most astonishing fact about private eavesdropping in the face of California's criminal sanctions is the open, boastful, and almost cavalier manner in which this private eavesdropping is done. Under the heading of "Detectives" in the classified section of the Los Angeles telephone directory appears a listing of sixty to seventy private detectives or private detective agencies. A large number of the private detectives promise in their listings to supply the latest in electronic surveillance. "Secret recordings" and "Complete line of modern electronic surveillance" are blatantly advertised. In one large advertisement, where secret recordings and electronic surveillance are promised, the private detective, in order that his meaning may strike home, supplies two drawings depicting this clandestine activity, one showing a figure with earphones connected to a tele-

phone and another showing a detective with earphones connected to a contact microphone attached to a wall.

Recently, a private detective in San Francisco permitted himself to be interviewed by a reporter from a local newspaper. The paper printed a story on the private detective in its Sunday magazine section, describing some of his methods of operation and including a series of photographs which showed him using electrical eavesdropping equipment.⁷² In one, he is crouching in a completely equipped sound truck, wearing earphones for the purpose of picking up conversations being broadcast over tiny transmitters.

Although many private detectives hold themselves out as being ready and willing to make secret recordings of conversations, only a few in Los Angeles and San Francisco are fully equipped and generally considered expert "sound men." As was indicated in the discussion of law-enforcement activities, the equipment is readily available to private investigators, even from so-called police supply houses. Most private investigators own pocket recorders or briefcase recorders. Few, however, possess the technical skill to install a wiretap or to conceal a wired microphone or transmitter. Those without the technical skill and experience may find a renegade police officer, a telephone company employee, a supplier of equipment, or one of the few expert sound men to do this work.

There are two men in California who in the past and at the present time have done most of the private electrical eavesdropping. Each has many thousands of dollars' worth of equipment, each does extensive undercover sound work for law-enforcement agencies, and each is constantly in demand by private parties experiencing matrimonial, business, labor, or other problems.

One of these specialists ⁷³ does not have a formal engineering education, but since childhood, radio and sound have

been his hobby. He began his electrical eavesdropping activities in the East, where in the late 1930's he was employed by the Philadelphia Art Museum to determine who was stealing its art treasures. He installed microphones in places where the employees worked, and did his monitoring up in an attic in the museum building.

Shortly afterward he moved to Los Angeles and developed a lamp microphone. Conversation could be overheard in the room containing this lamp microphone by plugging a set of earphones or a recorder into an outlet in another room in the same building. The device drew the district attorney's attention to him, and in 1938 he went to work for the district attorney developing equipment and doing electrical eavesdropping. He has, since that time, worked for law-enforcement agencies throughout California and in other parts of the country.

His equipment, valued by him in the neighborhood of \$50,000, includes a completely equipped sound truck where he can monitor and record conversations being broadcast through tiny concealed transmitters. This truck contains a radio receiving set and an automatic tape recorder. It is virtually littered with lengths of wire, spare earphones, microphones, and transmitters. The truck is a small, unobtrusive black vehicle, completely closed in. When parked on the street, it is readily mistaken for the kind of truck used by plumbers, painters, and carpenters. As an aid in gaining access to buildings, he has also used in the past a green telephone company truck.

His headquarters has had several homes. The business has usually been housed in a structure of the garage type. In 1948, the complete sound laboratory was located in a wooden shed. It was fully equipped and usually served as a central monitoring place for the recording of conversations in many different places in the Los Angeles area. The conversa-

tions coming through microphones were channeled through leased telephone lines that were drawn directly into the wooden shed. Law-enforcement officers constantly made use of this convenient establishment.

He says that apparently some politicians as well as some police officers believed that he had tape recordings of their conversations which might be damaging to them, and in order to protect themselves some person or persons set his wooden shed on fire. Photographs of the burned-down laboratory offer grim evidence that a thorough job was done. He claims to have suffered a severe financial loss as a result of this burning.

He next built a sound laboratory in a concrete-walled building having the appearance of a garage. It was at this location that he did a good deal of work for the district attorney's office and the police department, and where he monitored conversations of Mickey Cohen and his mobsters in the late 1940's through microphones that had been placed in Mickey Cohen's office. He later moved to his present quarters, again a garage-like structure, which is adjacent to his home.

His bugging has been extensive, and illustrates the great variety of activity of electrical eavesdroppers, the kinds of cases in which they have been employed, and the kinds of results they obtain. For instance, he trailed a movie star all the way to Mexico to obtain information for the star's wife that he was engaged in illicit love affairs. He took a room adjoining the star's room in a Mexican motel and then planted a microphone in the wall and recorded conversations of an incriminating nature. However, the star had employed his own private detective to check for microphones, and he was caught red-handed.

His work has been popular with many business establishments in California. He offers a complete line of elec-

trical surveillance, from buried microphones to closed-circuit television. In one business house alone, he was called upon to install thirty-nine microphones. These were all listening posts in different departments; he was able to sit in one spot and by manipulating various switches listen in to any one of the stations. The monitoring was done in the boss's office where he spent many hours, with the boss, overhearing the employees' comments on their employer.

Two department stores in Los Angeles have installed closed-circuit television to spy upon shoplifters and pilfering employees. Two large food markets similarly employ closed-circuit television on a balcony, behind two-way mirrors, for the purpose of maintaining a surveillance over the food counters.

According to this specialist, there are at least ten to twenty automobile dealers in the Los Angeles area who have concealed microphones in the "closing rooms" where prospective purchasers are left alone to reveal how far they are willing to go toward the purchase of an automobile.

A similar type of eavesdropping has been used at manufacturers' show conventions, where microphones have been concealed in display booths to overhear the comments of observers concerning a manufacturer's product. Also tables have been bugged in a restaurant for the purpose, according to the proprietor, of permitting him to know what his customers actually think of his food and to detect discourtesy among his waitresses.

In San Francisco, there are not as many private detectives who boastfully advertise their electronic eavesdropping services as there are in Los Angeles. As a matter of fact, there aren't many private detectives in San Francisco who actually engage in electrical eavesdropping. There is one principal "private ear" and another who was the star electronic snooper in past years, but who is not very active to-

day. The busiest electrical eavesdropper in San Francisco is Harold Lipset,⁷⁴ who came originally from the East Coast and has a university background. His only experience in conducting investigations prior to his becoming a private detective in San Francisco was his war service as a commander of a criminal investigation unit.

Lipset has purchased some of the most expensive modern recording and eavesdropping devices, and he values his present equipment at approximately \$20,000. He also employs a young electronics technician whose chief assignment is to develop and construct eavesdropping devices. Few commercial broadcasting sound rooms are better equipped.

The district attorney's office, operating on the California prohibition against wiretapping, has found it necessary to employ Lipset for the purpose of installing bugs and wiretaps legalized by the *Malotte* decision. He has also worked for police agencies outside of San Francisco in the California area, and, from time to time, for law-enforcement agencies in other states. However, his principal work consists of private cases referred to him by lawyers. These range from domestic relations cases, negligence cases, and insurance claims to security work for big corporations. This detective has also had a brisk labor union business. He claims to have pioneered the use of bugs and wiretapping in the labor field in the San Francisco area, and has represented important union leaders. Businessmen generally are interested in using electrical devices, he says, but very often are not willing to pay the price for it.

Lipset claims that he does not engage in illegal wiretapping, but installs only "outside taps," either by induction or through off-premises extensions set up by the telephone company. The wiretap job starts at \$500 and can go all the way up, depending on the nature of the job and the risks involved.

He has begun to use transmitters to broadcast conversation. The tiny transmitter might be discovered, but it would be impossible to locate the receiving unit.

Most of the tape recordings which have been introduced in San Francisco courts have been produced by Lipset. He claims to have made three hundred recordings in the past three years. He has frequently been retained by lawyers representing defendants in criminal cases and by means of secret recordings has been able to secure acquittals. In one case where his client was charged with having purchased stolen fountain pens, knowing them to be stolen, the prosecutor's witness had testified that he informed the defendant when he sold him the pens that they were "hot goods." The private specialist engaged this salesman in a conversation in a hallway concerning the transaction. The salesman admitted eventually that he had never informed the defendant that the goods had been stolen. Lipset was wearing a small pocket recorder, and on the basis of the recorded conversation the defendant was acquitted.

A large part of Lipset's work is installing microphones connected to automatic recording machines in business offices or in homes, to record a conversation his client expects to have with another person. These steps are taken to protect the client as well as to obtain evidence.

Not only does Lipset have modern sound equipment which can be used for stationary installations, but he also has a fully equipped receiving station installed in a disguised sound truck. This truck is commonly used in conjunction with all transmitters concealed in various places in the vicinity of the truck.

He says that he has very little trouble in installing microphones or wiretaps, because in the guise of a repairman he has access to any place in the city. He recalls one instance where he put a wiretap on a telephone of a patient in the

hospital. He says the patient even got out of bed and helped him install it, thinking he was a telephone employee.

In all his work, he is constantly in need of contacts. For his wiretapping he has telephone employee contacts for the purpose of obtaining pair and cable numbers. Despite the fact that the police chief in San Francisco uses a Los Angeles specialist, Lipset has good contacts among lower-ranking San Francisco police officers. He has installed microphones and wiretaps in most of the leading hotels in San Francisco. He has been able to do this through hotel management contacts below top management. It has been his rule never to go to the top, but always to find somebody at a lower level.

Although most private detective wiretapping and bugging in the California area is done for the purpose of obtaining evidence relating to a court suit or for security purposes in business plants, it was recently revealed that some private snoopers have been using electrical eavesdropping devices to obtain stories to be used in certain sensational exposé magazines.⁷⁵ Testimony was developed before the Grand Jury in the *Confidential* magazine case in Los Angeles that investigators had used wiretapping and hidden microphones to collect information for the magazine. These private detectives testified that they freely used the small pocket recorder when they conducted interviews. One informer for the magazine, Ronnie Mary Quillan O'Reilly, known as Ronnie Mary Quillan, testified that she was a madam and a prostitute and in contact with many girls. She testified that Robert Harrison, the head of *Confidential*, got in touch with her and wanted her to write stories for him relating to lewd situations with movie stars. She said that Harrison wanted her to use a wristwatch microphone, together with a Minifon, to get a recording of a conversation in which she was to confirm a story for the magazine.

In another situation, she said that a private sound specialist was employed by Harrison to tap the telephone of an actor in his apartment house to obtain clarification of a story involving the actor the magazine was printing.

Another witness testified that Harrison authorized a private detective to tap telephones if he had to in order to gain information.

Testimony was also obtained that Barney Ruditsky, a private detective in Los Angeles, worked with Harrison for the purpose of supplying facts for stories that were used by the magazine. It is significant that it was the same Ruditsky that worked closely with Jim Vaus, Mickey Cohen's wire-tapper, during the late 1940's. Vaus claims that a number of his early wiretapping assignments from movie stars were obtained for him by Ruditsky.

CHICAGO

Wiretapping is illegal in Illinois, whether done by police officers or private detectives. As early as 1895, the Illinois legislature specifically prohibited wiretapping for the purpose of intercepting news dispatches.¹ Apparently at the very inception of the public use of the telephone, newspapers had employed wiretapping to steal exclusive stories.

In 1927, in the heart of the prohibition era, when law-enforcement officers were making abundant use of wiretapping against bootleggers, the Illinois legislature passed an outright ban against wiretapping by anybody, including law-enforcement officers.²

Because of this ban, law-enforcement officers in Chicago have consistently denied that they use wiretapping in criminal investigation. Recently, in a federal criminal case where wiretapping was charged by the defense, top-ranking Chicago police officers took the stand and, under oath, stated

that the department had never used wiretapping. Chicago has set up the tightest curtain of secrecy concerning wiretapping practices of all of the cities in this country operating under a wiretap prohibition.

Initially, our investigation was unable to get any information on this subject out of Chicago. Judges, lawyers, newspapermen, prominent citizens, and even a former state's attorney, all expressed the honest opinion that Chicago police do not wiretap.

We found it almost impossible to locate an investigator who would be willing to dig for facts. At last we did find a man who had been engaged in federal, private, and local law-enforcement undercover activity in the Chicago area for thirty years. He was frightened off the assignment after a short investigation and turned in a vague and valueless report.

Finally, through the personal efforts of the director of the study, the confidence of high-ranking members of the police department and state's attorney's office was obtained and the Chicago story unfolded. The facts were corroborated by discussions with other members of law-enforcement agencies, certain lawyers having intimate acquaintance with these procedures, private detectives, and representatives of Chicago's racket world.

Despite the prohibition against wiretapping in Illinois, Chicago police make wide use of wiretapping, and so did the state's attorney's office prior to 1952.³ In 1952, the former Municipal Court judge, John Gutnecht, was elected state's attorney of Cook County. Gutnecht had always been opposed to wiretapping and firmly forbade its use in the state's attorney's office.⁴ Gutnecht claims he warned the police and the telephone company that he wouldn't tolerate wiretapping by any law-enforcement agency.⁵ Nevertheless,

the police continued to tap, with Gutnecht totally ignorant of their activities.⁶

In 1956, Gutnecht was defeated for reelection and a new state's attorney took office. Many of the persons who engaged in wiretapping prior to Gutnecht's administration are still in the state's attorney's office, but it is too early in the new administration to learn what the present state's attorney's practices will be in Cook County.

The unit in the police department responsible for most of the wiretap activity in Chicago is the intelligence unit, popularly known as "Scotland Yard."⁷ This unit was purported to have been disbanded in 1956 after the election of a new mayor. It had been charged that the previous mayor, who was defeated for reelection, employed members of the Scotland Yard to wiretap his opponent during the election, and that it was because of these activities that Scotland Yard was disbanded.⁸ The police commissioner denies this and says that Scotland Yard had become too unwieldy and uncontrollable, and that in the interest of good police administration there had to be a change.

As a matter of fact, Scotland Yard has not been disbanded. It has been placed under the direct supervision of the police commissioner and operates out of the police commissioner's office.⁹

For a long time, Scotland Yard contained forty men whose principal activity was wiretapping.¹⁰ They were located all over Chicago, manning wiretap installations in basements, in hotel rooms, wherever they could set up a plant, and conducting a surveillance over syndicate racketeers and other persons engaged in criminal activities.

Some of those intimately acquainted with Scotland Yard's wiretapping activities claim that wiretap surveillance over kidnappers and suspected murderers and in cases involving other major criminal activity was generally for a law-enforce-

ment purpose. However, they say that in the case of organized rackets and even in some narcotics investigations, wiretapping was frequently used for shakedown purposes.¹¹ Many police officers were on the weekly payroll of the syndicate.¹²

Scotland Yard had a wide variety of wiretapping equipment. Its members used both direct tap and induction tap techniques. They possessed automatic recorders which were infrequently used. On their shelves was found an instrument they called a dial recorder, but which was the same electronic device as that known as the pen register in New York, used for the recording of dialed-out telephone numbers. Most of the equipment was purchased from a police electronic supply house in California. However, a quantity of electronic eavesdropping devices were built by a police officer within the Scotland Yard unit who had a technical background obtained during his service in the Signal Corps and the United States Army Secret Service.¹³

The wiretapping equipment of Scotland Yard was always in use. There were at least ten to twelve constant wiretaps going every day. In almost every major investigation the unit conducted, wiretapping was employed in one way or another. Of course, information obtained through wiretapping was never used in evidence because of the statutory prohibition. It was used as an investigative aid and for leads.¹⁴

The Scotland Yard police had the complete cooperation of certain employees in the telephone company.¹⁵ The pair and cable numbers of telephones to be tapped were provided by these telephone company employees at the request of the police. A valuable service performed by the telephone company employees for the Scotland Yard unit was the giving of warning whenever a subject of a tap complained to the company that he suspected his telephone was wiretapped.

If the situation was "too hot," telephone company employees would request the police to get the tap off. In the case of an ordinary complaint, there would be no effort to remove the tap.

Scotland Yard police recognize, however, that a number of telephone company employees were on the payroll of syndicate racketeers. It soon became clear that wiretapping the "big boys" was almost impossible, because every time a pair and cable number was obtained through the help of telephone company employees, a leak to the "big boys" followed at once.¹⁶

Effective use of wiretapping is claimed by Scotland Yard police.¹⁷ In those cases where there has been enforcement of the gambling laws by police, wiretapping is claimed by them to have been invaluable in learning the location of the places to be raided. Through wiretapping a kidnapping gang was apprehended, when the police tappers overheard telephone conversations between members of the gang who were trying to change \$75,000 ransom money they had collected into small bills. A police raid ensued, and the kidnappers were caught with the money in their possession.

Wiretapping was also credited by Scotland Yard police with almost complete extermination of a highly skilled gang of jewel thieves. Although the jewel thieves displayed caution on the phone, the overheard conversations were sufficient to indicate when a major burglary was to take place. On one such occasion police in unmarked cars trailed members of the gang in order to locate the place to be burglarized. Unknown to the police, the jewel thieves possessed modern radio equipment. At a location some distance from the target, members of the gang were stationed with small transmitting units ready to broadcast a warning which would be picked up by small receiving units worn by the gang members on the job. The trailing police car was spotted,

the warning was given, and a chase ensued. However, the police shot and killed five of the six members of the gang.

As frequently happens in police wiretapping, a major criminal activity was uncovered accidentally, while members of Scotland Yard were wiretapping on an entirely different investigation. In the course of a wiretap surveillance for the purpose of locating a kidnapped local legislator, conversations were overheard which provided information about a gigantic narcotics operation. Sufficient clues were obtained through the wiretap to permit the police officers to make a raid and to arrest a person considered by the federal narcotics agents to be one of the major narcotics peddlers in the country at that time.

Scotland Yard police had often suspected that some Municipal Court clerks warned racketeers of impending raids through information they picked up when police officers made applications for search warrants. On one occasion, members of Scotland Yard placed a wiretap on the judge's phone and then sent a police officer to the judge's chambers to apply for a search warrant. Within a few minutes, the judge's clerk was overheard calling the downtown office of the syndicate and warning them that a raid was to be made.¹⁸

Wiretapping has also been used by Scotland Yard in investigations of call girl activities. In some instances, police recall, three wiretaps were in operation on one case alone.

A number of wiretaps installed by police are installed at the request of the subscriber to the telephone. These cases usually involve kidnapping and extortion plots. It is generally believed by police in Chicago that the Illinois prohibition does not apply to a subscriber tap, that is, one where the subscriber consents to the overhearing of conversation on his telephone.

Scotland Yard police are not eager to have any attempt made to have the legislature legalize wiretapping. They say

that even if wiretapping is illegal, they are going to tap anyhow, and therefore can't see any reason to make it legal.¹⁹ Raising the question in the legislature, they believe, would only stir up controversy and direct the attention of the legislature and the public to police wiretapping. These same police indicate a reluctance to have a court order system imposed on them similar to that set up under the New York wiretapping law. They distrust the Municipal Court and claim that if they had to go to the Municipal Court to get an order to wiretap their case would "go out the window."

Prior to Gutnecht's administration in the state's attorney's office of Cook County, the state's attorney's office consistently employed wiretapping in major criminal investigations where use of such a technique was believed to be necessary.²⁰ One investigating officer of the state's attorney's office declared that he could think of no instance where wiretapping was not employed if it was believed that it would be helpful to the investigation. As in the case of the police use of wiretapping, the information collected by this means was used only as an aid to investigation and never in evidence in criminal cases.

The state's attorney's office also installed a number of "subscriber taps." One of the major cases in which this technique was employed related to a manufacturing concern, where a large-scale bookmaking operation conducted by employees was suspected. The state's attorney's office tapped all the telephones in the plant. The information obtained from the overheard telephone conversation enabled the police to arrest all the participants in the gambling organization.

Most of the equipment used by the state's attorney's office for wiretapping was obtained through the Bell Telephone Company and was manufactured by Western Electric

Company on specifications approved by the Bell Telephone Company.²¹ This equipment had been built for monitoring purposes and not wiretapping. However, technicians in the state's attorney's office adapted the equipment for wiretap use. For security reasons, investigators in the state's attorney's office did not seek telephone line information from employees of the telephone company to aid them in making installations. Rather, they employed as police officers three former telephone company employees who had many years experience with telephone company equipment. These men were able to locate pair and cable numbers for state's attorney investigators. Complete cooperation, however, was received from employees of the telephone company, and as in the case of the Scotland Yard unit, telephone company employees would warn state's attorney investigators whenever the subject of a wiretap complained to the company.

The police commissioner of Chicago maintains to the present time that the Chicago Police Department does not employ wiretapping in criminal investigations. When told of the reports that this study had of constant use of wiretapping by Chicago police, the police commissioner stated that any such wiretapping was done without his authority and against his specific instructions.

It is significant that since the enactment of the wiretap prohibition in 1927 there has been only one prosecution under this act. However, it is reported by representatives of the underworld that some retaliation has occurred when police wiretappers have been caught by members of the rackets. According to these reports, the police equipment has been seized and the police officers severely beaten. The assailants have remained confident that police officers treated in this way would not be expected to complain.

Until recently, the police department made no effort to conceal the fact that it makes abundant use of concealed

microphones and transmitters.²² However, in 1957 a bill was introduced in the legislature to prohibit police use of any electrical eavesdropping device, including microphones. Since the introduction of this far-reaching bill, the police have been less willing to talk about their use of microphones. Subsequently, the bill was enacted into law, with the police, strangely, making little effort to stop its passage.²³

The Scotland Yard unit possesses a wide variety of small microphones and transmitters. It has rejected the parabolic microphone as not being practical for police work. Most of the microphones it purchases from the same California police supply house that supplies its wiretapping equipment.

Likewise, the state's attorney's office has made active use of microphones and transmitters.²⁴ Its officials especially stress the success they achieved in destroying a major abortion ring through the use of a microphone which had been dropped between the walls of the abortionist's office. The wire from the microphone was connected to a receiving unit in another room, and an entire record of the conversations of the abortionist was obtained.

Informers are considered of vital importance by law-enforcement agencies in Chicago.²⁵ Protection from prosecution and the promise of leniency if prosecuted are among the usual inducements offered to informers.

Also, undercover police officers have been used in investigations against the gambling syndicate and in narcotics cases.

There is evidence that some police officers carry with them search warrants that are signed by judges but left blank.²⁶ Under the Illinois rule, evidence which is illegally obtained is not admissible in a criminal case. Thus, these officers arm themselves with blank warrants in order to be ready to produce them if important evidence is obtained in an illegal raid. The technique, however, is scorned by other police

officers, who say that if a policeman has to do that, he might as well go in without a warrant. There is abundant evidence that a number of searches and seizures are made without warrants for the purpose of making evidence unusable in court.²⁷ Such raids are naturally carried out by police in collusion with racketeers.

The only persons convicted of violating the 1927 Illinois prohibition against wiretapping in the entire history of that act were the employee of a private detective, caught wiretapping, and the client who ordered the wiretapping to be done. They were each fined \$300.

A flourishing private wiretapping business is conducted by a number of private detectives in the Chicago area. Most of them are able to get a good telephone company employee contact for the purpose of learning where to install their tap.²⁸ A good number do not possess their own equipment, and do not actually make the wiretap installation themselves. Sometimes they are able to find a police officer who will do the work for them, or a telephone company employee.²⁹ More recently, wiretapping has been done for a number of private detectives by the operators of several private recording companies who possess modern equipment and the technical experience to make the installation.³⁰

One private detective, who has made six hundred surreptitious recordings, enjoys excellent relations with telephone company employees. He has the enviable position among private detectives of being employed by the telephone company to do some of its security work.³¹

Private detectives in the Chicago area are frequently employed by lawyers for subscriber tapping. Private detectives believe that they may legally tap a telephone if the subscriber to the telephone gives them permission. This type of work is usually done in domestic relations cases, but also plays a part in industrial security checks. The standard pro-

cedure for such tapping is to have the telephone company install an extension to the subscriber's phone. The extension is placed anywhere in the city, in an office, another apartment, or at times in a garage. The telephone company charges a mileage and installation fee for this service.

Some of the large department stores and industrial plants in Chicago use this type of wiretapping for intercepting calls made by their employees, in order to check on security leaks, thefts, or employee courtesy and efficiency.³² Hotel management in some downtown Chicago hotels makes spot checks on calls made by guests through the switchboard.³³ Private detectives with good hotel contacts have been able to get the help of some switchboard operators to install their own wiretaps on a hotel guest and record the conversations in another room.³⁴

Some department stores have placed a constant tap on the pay stations within their building for security reasons.³⁵

Private detectives have also employed cameras for eavesdropping work. One downtown department store in Chicago secretly takes moving pictures of suspected shoplifters, and another maintains surveillance by means of closed-circuit television.³⁶

The files of one private detective who has been wiretapping and bugging in the Chicago area for a number of years reveal the typical activities of a private wiretapper. The following are brief summaries from these files with no reference made to names and places, in the interests of preserving anonymity.

File A:

A well-known manufacturer requested electronic telephone surveillance to be installed on his private telephone at his residence. An extension from his telephone was installed leading into a small hotel in the suburb. All telephone calls were intercepted and monitored by the man who made the instal-

lation. The hotel people were suspicious of this man's activity in the hotel where he had to stay day and night to cover all phone calls. As a result of this, a change was made and the telephone extension was led into a motel for a period of about three months. The purpose of this surveillance was to determine whether or not the manufacturer's wife was unfaithful to him, but no such evidence was found.

File B:

A paper-manufacturing corporation requested a telephone surveillance be placed on a competitor. One tap was made at the competitor's office, and the wire was led to a nearby basement where the tapper was monitoring. In addition to this tap, another tap was made at subject's residence, which was a large apartment building, and monitoring was conducted about a block away from the tap in the basement of a janitor's apartment. This type of surveillance lasted about three months.

File C:

By arrangement with the house officer of the "X" Hotel, it was possible for the man in charge of the investigation to conceal a microphone in a room and lead the wire into another room wherein conversation in the room was recorded. This lasted two days. The nature of the investigation was to record a conference being held in subject's room.

File D:

A request was made to learn what conferences another certain individual had in the "X" Hotel. A microphone was concealed behind the telephone box and the wire led into another room where a recording was made.

File E:

A request was made for electronic surveillance for which arrangements were made with the management of the "X" Hotel to procure a room next to the subject and a special operator was assigned from early morning until late at night

to survey all incoming or outgoing calls by the subject. A carbon mike was placed at the bottom of a door which had a half-inch opening from the floor. This door, between the observation room and the subject's room, was locked. All room conversations were recorded via the carbon mike, and when the subject had a telephone call, the switchboard operator rang the surveillance man's room, advising him whether the call was going in or out. The surveillance man then switched from room conversation to telephone conversation through special equipment. The telephone conversation was then recorded.

This surveillance was being paid for by a well-known businessman of advanced age, who a number of years ago had hired a girl (the subject of the surveillance), then about sixteen years of age, to pose as his secretary going from one town to another. When the girl was twenty-two years of age, her employer had dismissed her, and she was suing him for damages. Her attorney called her frequently, and she would call him back with regard to the damage suit.

It was learned through the room conversation and telephone surveillance that she had become a prostitute after being fired by her former employer, and her fee was \$100.

File F:

A woman left her home town to visit for a few days in Chicago. She registered at the "X" Hotel and was given a room on the fourth floor. A request was made by her husband to intercept telephone and room conversations. As a result, a room next to the subject was rented and technical surveillance was maintained on the telephone and by microphone. This surveillance revealed nothing more than that the wife called a dancing studio and made an appointment to take dancing lessons.

File G:

A suit was filed for \$50,000 against a cab company for damages based on personal injuries. The cab company requested

that technical surveillance be placed on the subject's (plaintiff's) room. The subject and his wife were located in one room for one night and surveillance was maintained in the room adjoining this one. By means of induction coil, all telephone conversations were intercepted and recorded, and the room conversations were intercepted and recorded by a microphone which was installed in subject's room. This claimant was very cautious, and the following day, he changed to another room. The same technical setup was used to intercept all phone calls and room conversations. While waiting for the case to be brought to trial, subject changed to four different rooms—each one for a twenty-four hour period. Electronic surveillance was maintained in each room. As a result of this technical surveillance, it was proved in court that subject's claim was illegitimate and the cab company won the case.

File H:

A detective agency employed a sound technician to make an installation in a small apartment in Chicago. The agency supplied the technician with a key to the apartment. The woman involved and her son were out to a movie, and this gave the technician two hours to make the installation. A carbon microphone was installed behind the refrigerator in the small kitchenette and the wire led into the hallway and under the carpet into another apartment rented by the agency. The distance was about sixty feet. An amplifier was installed in the investigator's apartment.

About a month prior to this, a telephone installation had been made to intercept all telephone calls. However, it could not be determined what took place in the apartment and the sound installation had then been requested.

The client was a well-to-do manufacturer, who had visiting rights with his son one day a week. On a day when the client's son was visiting him, a man later identified as a milkman visited subject's apartment and spent the afternoon. Timed with the use of the sound equipment, a break-in was effected

by the investigator, the client, his attorney, and the wife of the milkman. As a result of this, the client was awarded full custody of the boy and a divorce.

Telephone installations and the use of telephone company contacts play a major role in the day-to-day activities of Chicago racketeers.³⁷ This is part of racket defense and intelligence efforts against police electrical surveillance aimed at the rackets. As has been mentioned, Chicago racketeers have been able to buy the cooperation of some of the very telephone company employees who are approached by police for telephone information against them.³⁸ Thus, as soon as these telephone employees learn from the police the target of their wiretapping, they leak it to the racketeer.

Telephone company employees also set up for numbers men and for bookmakers the extra telephones necessary in such gambling activities.³⁹ In order to dodge police wiretapping, racketeers have paid telephone company employees to set up elaborate extensions which they call "regroupings," whereby the number of a decoy phone is used. A raiding police squad merely finds an empty house, since the phones used by the racketeers, tapped into the decoy phone, are set up in a location not registered with the telephone company.

In 1956, the special agents' division of the telephone company uncovered 545 telephone taps that had been used for bookmaking by gamblers throughout the state of Illinois. During the same period, Chicago police uncovered seventy-seven telephone taps installed by bookmakers in the Chicago area.

4

VIRGIN JURISDICTIONS

PHILADELPHIA

Prior to the summer of 1957, and within the limits of their budgets, the Philadelphia Police Department and the district attorney's office used a wide variety of eavesdropping devices and techniques as weapons against crime. In July, 1957, the Pennsylvania legislature enacted a statute which provided for a total prohibition of all wiretapping, including law-enforcement wiretapping.¹ What follows is a description of law-enforcement activity prior to the wiretapping prohibition.

There had been a long history of police and district attorney wiretapping for law-enforcement purposes. But before 1952, except for the revelations of the 1951 Grand Jury, this police technique was kept under wraps, and its use was generally denied if the question came up.² In 1952, a change in the city's political administration brought in a new police chief and a new district attorney, and from then on, the police and district attorney's office became bolder in their use of wiretapping and more and more willing to talk about it and to credit wiretapping with the solution of crime.

Two facts apparently explain this policy. First, it was generally believed by law-enforcement officers that wiretapping

was not illegal in Pennsylvania, since there was no law prohibiting it. The police were confident that the federal prohibition against wiretapping, found in Section 605 of the Federal Communications Act, would not be applied to them, and that a police officer would not be prosecuted by the United States Attorney. Second, in 1954, the Superior Court of Pennsylvania, in *Commonwealth v. Chait*, actually said that the Federal Communications Act did not apply to wiretapping done by local police for local law-enforcement purposes and to be used in a local court.³ The specific issue in the Chait case was whether the wiretap evidence obtained by police was admissible in a state court as evidence for the prosecution in a criminal case. Pennsylvania is one of the many states which permits the admission of evidence no matter how obtained, even if by an illegal means, so long as the evidence is otherwise relevant and material. It would have been sufficient for the court to find that, regardless of whether wiretapping was legal or illegal in Pennsylvania under the Pennsylvania rule of evidence, it was admissible. However, the court went further, and said that there was no state prohibition against wiretapping, and that the federal Congress never intended Section 605 of the Federal Communications Act to apply to purely intrastate police wiretapping.

There was no occasion for federal review of this decision. However, later federal cases, arising in other states, have clearly arrived at opposite conclusions from the ruling of the Superior Court of Pennsylvania in the *Chait* decision.⁴

Regardless, however, of the validity of the *Chait* decision, this expression of the Superior Court of Pennsylvania was accepted by police officers in Pennsylvania as affirmative approval of police wiretapping.

The Chait case was significant in Pennsylvania for another reason. It represents the first time that a Pennsyl-

vania prosecutor introduced wiretapping evidence against a defendant. Although before the *Chait* decision wiretapping was being used extensively by Philadelphia police officers, as well as by police officers throughout the Commonwealth of Pennsylvania, sufficient doubt as to its validity existed to create a general policy against using wiretap evidence in court.⁵ This policy was also supported by the general theory that it was good police practice to use wiretapping as an aid to investigation, but not to reveal use of this technique to the public through exposure in court. After the *Chait* decision, Philadelphia police began to favor the use of wiretapping evidence to support a criminal charge. Three cases under investigation in Philadelphia at the time of the *Chait* case were being built on wiretap evidence. All three cases involved persons the police called "leaders" in the illegal lottery racket in Philadelphia. *Chait* was also charged with conducting an illegal lottery. Gambling, it was clear, was the principal target of the wiretappers.

In only one of the three cases referred to were the recorded telephone conversations ever actually used in court, and then in such a manner as to cause a mistrial. In the other two cases, the defendant pleaded guilty when confronted with the wiretap evidence. In the case where the mistrial occurred, a conviction never was obtained, since by the time it was relisted for trial, the legislature had passed the ban on wiretapping, which included a provision making wiretap evidence inadmissible. Since the entire case rested on wiretapping, the defendant was discharged for lack of admissible evidence.⁶

In theory, police wiretapping in Philadelphia was done by picked men operating out of a number of special squads in the police department.⁷ Examples of such squads were the Intelligence Unit of the Detective Bureau; the Commissioner's Squad; the Special Squad of the Chief Inspector

of Uniform Forces. Another squad using wiretapping was assigned to narcotics investigations, and a general roving squad paid special attention to vice.

In the district attorney's office, wiretapping was under the supervision of the chief of county detectives, who had one or two men specially trained for this activity. Often, however, special officers from one or more of the police squads would do the work for the district attorney's office. At no time did the special squads of the police department or the county detectives' force of the district attorney's office have a large amount of equipment. Budget restrictions were the principal cause of the lack of equipment, along with the reluctance on the part of the police department and the district attorney's office to formalize their wiretap procedures to the point of making specific budget requests of the City Council for funds to purchase equipment. In 1955, the district attorney's office for the first time put in a request for \$5000 to purchase electrical equipment.

The total equipment owned by the Intelligence Unit of the Detective Bureau, a unit which was principally concerned with the installation of wiretapping, included seven "impulse recorders" (machines to report dialed-out numbers); twenty-five tape recorders; one microphone and transmitter set; three Minifon wire recorders (small pocket recorders); one telephone handset; and four headsets with condensers.⁸ This equipment had to be parceled out among the Intelligence Unit, the Chief Inspector's Office, the Homicide Unit, the Burglary Unit, the Robbery Unit, the South Detective Division, the Central Detective Division, the North Central Detective Division, the West Detective Division, the Northeast Detective Division, and the Northwest Detective Division, and in one case was loaned to the Pennsylvania Liquor Control Board.

As to the other special squads, it was reported that the

men assigned to wiretapping used equipment owned by themselves, since their equipment was superior to the available equipment owned by the police department.⁹ The only equipment assigned to the office of the chief inspector of uniform forces consisted of four "impulse recorders," one Mohawk midget tape recorder (small pocket recorder), and one Minox camera (miniature camera). The Commissioner's Squad reported possessing two "impulse recorders," two automatic tape recorders; and one non-automatic tape recorder, in addition to a number of dial handsets and some homemade headsets used by members of the unit.

The inventory in the county detectives' division of the district attorney's office was even more meager. It included two tape recorders, some headsets, a transmitter unit, and what was termed a "parabolic pickup" machine which was used in conjunction with tape recorders for automatic monitoring.¹⁰

The district attorney's office frequently was in the position of borrowing equipment from the various police squads. Most of the equipment owned by the police department and the district attorney's office was purchased from a local manufacturer of electronic equipment. This manufacturer specialized primarily in burglar alarms and police wiretapping equipment. In an emergency, the district attorney's office often borrowed equipment from its manufacturer-supplier, on the understanding that it would purchase the equipment whenever it obtained the funds to pay for it.

By 1956, official policy had developed in the police department which required specific permission of the chief inspector of the Criminal Identification Division for wiretapping or bugging done by members of that division. A form was available, which bore the caption "Request for Technical Surveillance" and which was addressed to the chief inspector, for the use of officers desiring to install a wiretap

or place a microphone on some premises. The form required information concerning the specific address and location which would be under surveillance; the name and business of the subscriber; the telephone numbers involved; the name, description, address, and criminal record, if any, of persons who were suspected in connection with the object of surveillance; and an explanation of the necessity for the surveillance.

In the special squads outside of the Detective Bureau where equipment was possessed either by the squad or the individual officer assigned to the squad, "technical surveillance" was under the supervision of the commanding officer.

No particular pattern of wiretapping existed in the police department or the district attorney's office. The operators of illegal lotteries, or what is commonly called the "numbers game," were the principal subjects of the tapping. In numbers cases, taps would often be placed on a gambler's phone or phones and permitted to remain there for a considerable length of time, in some cases one year.¹¹ The purpose of such lengthy surveillance was to continue to gather information in regard to who was involved in a particular numbers setup; where the various "banks" were located; and who at a given time might be in the possession of lottery paraphernalia. Police claim that as a result of this information constantly being fed to them, they made arrest after arrest of writers or pickup men who were named and identified in the telephone conversations.¹² Many searches of houses occurred as a result of information received on the wiretap, and lottery paraphernalia was seized. Supporting information in the affidavit for the search warrant was all based on wiretap sources, although the source was not mentioned. In case after case, in the magistrate's courts and in the criminal courts, when police testified, their

standard introductory statement, "On information received, we obtained a warrant . . ." generally indicated that the tip-off came through a wiretap.

Offsetting the effectiveness of wiretapping in this type of case was an activity known to the police as "tap burning."¹³ A tap was considered "burned" if one of the officers assigned to the surveillance tipped off the gambler when the police were on his line. The price for such a service was usually \$100, but more could be received, depending on the extent of the operation. For example, if the tap was on a numbers bank, the police officer doing the "burning" would get \$300, and would probably be placed on the payroll of the bank for \$50 a month. One wiretapping police officer was reported to have sold the entire transcripts from an extended wiretap on a gambler to the gambler who was the subject of the investigation.¹⁴

In defending themselves against police wiretapping, Philadelphia gamblers have spent large sums of money for protection and for the installation of elaborate electrical setups to throw the police off guard.¹⁵ The activities of the gamblers are not in a true sense eavesdropping practices. They are listening in to no one, but they are using the same kind of equipment and the same technical experience to combat police surveillance as are used in the surveillance itself.

These complicated electrical arrangements designed to protect the gambler utilize "pooled wires" or the installation of "cheese boxes."¹⁶ In both cases, a decoy phone is used. The decoy phone generally belongs to a person who works during the day, who has agreed to let it be used in return for the phone bills being paid and usually for an additional fee of \$50 a month.

In the "pooled wire" technique, an extension is taken off the decoy phone and placed where the recording of the bets will be made. When the decoy phone's number is dialed,

it will ring in two places, the place where the original telephone is located and the place of the extension. Police officers using a pen register or dial recorder to locate the number will find an empty house when they make a raid, since the only address they will receive from the telephone company will be the address at which the decoy phone is listed.

This extension is usually installed by a telephone company employee for a price of anywhere from \$150 to \$300, which includes the additional telephone unit.

A "cheese box" is a much more complex contrivance. The Philadelphia version of the cheese box involves an additional electronic device combined with a pooled wire system. It consists of a timer and switching device that will cut the gambler's phone in at a given time, and then cut back to the decoy phone at another specific time. The time period corresponds to race track time. The Philadelphia cheese box will cut out the decoy at 10:30 A.M. and pick up at the gambler's phone. At 3:00 P.M., the timer will cut out the gambler's phone and revert to the decoy. This elaborate setup is also usually installed by a telephone employee, and the price ranges up to \$1500 depending on the number of phones connected into the system.

Of course, the activity of telephone company employees in this area is prohibited by telephone company policy, and immediate firing is the penalty for being caught. One of the most serious scandals involving telephone company employee cooperation with gamblers occurred in the early 1950's, when it was found that a telephone supervisor had changed the pairs of phones used by certain gamblers.¹⁷ This was discovered by the special agents' division of the telephone company, and all the employees involved were fired.

From time to time, startling information is heard by the police monitoring the wiretaps in gambling investigations.

In one case, a numbers banker was overheard calling a Philadelphia magistrate and complaining about one of his men being arrested by police.¹⁸ The gambler ordered the magistrate to see to it that the "writer" was discharged, and the magistrate replied in a subservient tone of voice that he would do the best he could. In the case of another numbers banker, repeated calls were received by the gambler from unidentified sources warning him when certain special police squads were going to make raids on writers or pickup men in his employ.¹⁹ It was clear the calls came from a police source and perhaps a high one. The gambler was then overheard calling the writers and pickup men named in the tip-off and warning them of the impending raid. Subsequent police records showed that the raids were made and were fruitless.

Although wiretapping was used principally in gambling cases, it also was used by police from time to time in a wide variety of other criminal matters. In 1955, the district attorney of Philadelphia testified before a sub-committee of the United States Congress inquiring into wiretapping that wiretapping had been successfully used in an abortion ring investigation; a prostitution ring investigation; the investigation of the theft of civil service police examinations; extortion cases; and even major robbery and homicide cases.²⁰ He placed some emphasis on the use of wiretapping by police in narcotics cases. One particular seller of drugs had a number of "pushers" working for him on the street. These pushers received their assignments by phone, and were told where to go and what to sell. On the basis of information received by an informer, a wiretap was installed on the drug seller's home phone and his calls to his pushers were overheard. From time to time, as a result of this, arrests were made on the spot at the time a pusher was delivering the package of drugs. The monitoring police officers overheard

the protesting calls of the jailed pushers to the seller, complaining that a "stool pigeon" must be giving information to the police. Apparently no one suspected a wiretap. Later, in conjunction with a mass raid on narcotics peddlers throughout the city, the wiretapped peddler was arrested in his home, despite the fact that the wiretapping police officers had picked up a call to him warning him of the impending raid.

Police report that wiretapping has been successful in the solution of a number of robbery cases. One of the techniques employed in conjunction with wiretapping is for the police to call in a suspect and tell him that they have already received confessions from his friends who engaged in the robbery with him, and that he was implicated. It is hoped the suspect will go home, will call up his confederates, and will enter into a conversation concerning the robbery and their supposed confessions to the police. A wiretap has previously been installed on the suspect's phone. This plan has often worked, and the information received in the course of these calls has usually been enough to give the police sufficient leads to break the case.

Since wiretapping was not a matter of record and required no applications to courts, there is no way to determine the number of wiretaps installed in Philadelphia by the police or district attorney. There was no hesitancy about wiretapping on the part of the police or district attorney, and in the routine daily activities of the police department and the district attorney's office, the equipment possessed by these law-enforcement agencies was, as we have seen, constantly in use. The police department has reported that in every major criminal investigation in the city of Philadelphia where wiretapping could be of help, wiretapping was used. The equipment was either out on installations or in the repair shop. Very rarely indeed would an idle piece of

equipment be found at headquarters or at a police station. This was true in the district attorney's office as well, where wiretaps were constantly being installed on certain numbers bankers and from time to time in other major cases under investigation.

The extensive use of wiretapping constantly taxed the small amount of equipment possessed by the law-enforcement agents, and usually at the last minute there was a feverish effort to locate a recorder, a transmitter, or a dial recorder.

Another fact uncovered by this investigation indicates that wiretapping by police in Philadelphia may have been conducted on an even grander scale than has been indicated so far. We have discussed the use of equipment possessed by law-enforcement departments which belongs to the city of Philadelphia. It was rumored, however, that a number of police officers owned their own equipment, and we sought the cooperation of the police commissioner to learn if this were true.²¹ At our suggestion, the commissioner issued general order 63, calling upon all members of the police department to report in writing any equipment they personally owned which could be used for eavesdropping purposes. Quickly, the word spread in the police department that a number of police officers were disobeying the order, either by failing to report equipment they continued to own and use, or by the simple device of transferring the equipment to a relative or friend.²² In any event, eighty police officers filed statements with the commissioner of police revealing electronic equipment they personally owned for eavesdropping purposes.²³

This equipment included dial recorders, automatic tape recorders, telephone handsets, telephone pole safety belts, and a large assortment of earphone sets with condensers connected to wires with pinch clips for the purpose of mak-

ing attachments to telephone pairs. One officer even possessed a used telephone company green truck.

Some of these police officers who reported on their personally owned equipment were attached to the special squads assigned to wiretapping, and were using their own equipment in their jobs. Others were not assigned to special squads, but were constantly climbing poles and tapping wires in order to get leads which might result in arrests. Some police officers, seeking the favors and protection of certain superiors, were daily tapping telephone conversations of suspected parties and turning over bits of information to captains or inspectors which often led to a search and seizure or to an arrest. Although the wiretapper remained in the background and received no credit for the arrest, he had secured powerful friends.

Some wiretapping police officers, on the other hand, were on the payroll of numbers banks, leaked information to gamblers, and participated in tapping fellow police officers.²⁴

A special intelligence unit was ultimately set up that did almost nothing but wiretapping for the purpose of picking up all kinds of information relating to criminal acts which went over the telephone and passing this information on to various operating units so that they might make arrests. The intelligence unit itself remained in the background and was given no publicity in regard to the arrests.²⁵

When one high-ranking police officer learned that members of the special intelligence squad had been tapping his telephone, it was realized by police that the intelligence squad was also engaging in internal police affairs, that is, conducting electronic surveillance of police officers.²⁶

From a technical standpoint, the development of wiretapping by police in Philadelphia was haphazard and unplanned. Originally, only a few selected men working for a captain or inspector tapped wires.²⁷ These were men with-

out specialized training, who had learned how to install a wiretap. The activity was kept secret at first, and even members of the police department who made arrests on information originally obtained through wiretapping were unaware of the source. As soon as it became generally known in police circles that wiretapping was producing important leads in criminal cases, more and more police officers wanted to use it for their own investigations. As has been indicated, the police department took steps to centralize the activity, but equipment was so widely distributed among police officers generally that in effect there was little central control.

The men who were doing the wiretapping picked up the art as they went along and soon learned that all they needed to listen in on a telephone conversation was a headset, a condenser, and a line connected with pinch clips. All this they could buy for a few dollars; if they could pick up a spare headset, the total outlay for the other equipment would not have to be above fifty cents. One more step, however, was necessary. They needed to know where to place their pinch clips to "get on" the telephone in which they were interested.

As will be shown in Part II, the pairs of a particular telephone line appear at the house where the telephone is located and then at various terminal boxes all along the way to the main frame at the exchange office. At the house, as a rule, only the pairs of the specific telephone assigned to that house are available. Therefore, it is an easy thing from a technical standpoint to connect into the conversation by making an attachment to these house pairs. In order to be connected into a particular telephone at any other point, the tapper must know the pair and cable numbers assigned to that particular telephone and the various bridging points, that is, the telephone poles where these pairs

can be located. This information is available at the telephone company office. Expert technicians can locate these pairs by other means, such as the neon light apparatus, a toner, or the use of a moistened finger, all of which will be described later. But Philadelphia police who were wiretapping rarely had such expert knowledge. A number of men who could not get telephone company information were so bold as to attach their lines right at the back of a house to the pairs of the telephone in that house.²⁸

The police officers operating in the special squads who were on specific assignments given to them by superior officers were able to make their connections on telephone poles at a distance from the house, because they were in possession of the information from the telephone company which they needed to find the correct pair.²⁹ The special agents' division of the Philadelphia telephone company cooperated with the police and district attorney's office in this respect. Often, of course, the telephone agents would inquire into the reason for a particular request and from time to time refused to give the information if the matter were too trivial or presented a risk to the public relations of the telephone company.

The police and the telephone company cooperated under the general assumption that wiretapping by police was a legal activity in Pennsylvania. They were supported in this opinion by the decision of the Supreme Court of Pennsylvania in the Chait case.

Strangely enough, although the special agents' division of the telephone company never requested any particular certification from the police when the latter sought telephone information for wiretapping purposes, sometime in the late 1940's the telephone company did insist on a court order when police sought access to records of toll calls. This was revealed in the Special Grand Jury Investigation in 1950-

51, when certain police officers were charged with falsifying court orders to obtain toll call records.

Since Pennsylvania has never had a statute authorizing police to conduct technical surveillance under court supervision, there has been no opportunity in Philadelphia to determine whether a court order system affords control. Some insight was obtained during the short period when the telephone company set up its own standard and requested court orders for toll call records. The Grand Jury investigation revealed that one judge signed and had his clerk seal batches of blank orders. A particular police captain had these orders filled out from time to time, at his pleasure, with the names of nonexistent persons but with real telephone numbers. These orders were honored by the telephone company. It was some indication of the kind of investigation being conducted by this police officer when it was revealed that the telephones of most of the rooms in a leading downtown hotel were included in the orders submitted to the telephone company.

Although by 1955 a mere call from a high-ranking law-enforcement officer to the chief special agent of the Philadelphia telephone company would obtain for the law-enforcement agencies the pair and cable numbers of a particular telephone, police understood that they were to protect the source of their information; if questioned on the stand, they were to answer that the pair and cable numbers were located by a technical inspection on the part of the wiretapping police officer.³⁰

Police officers who did wiretapping on their own, whether for law-enforcement purposes or otherwise, did not as a general rule have access to the pair and cable numbers through official sources in the telephone company. However, it was not difficult for such police officers to make contact with an employee in the telephone company who was in a po-

sition to get the information.³¹ At times, this relationship was a friendly one, and the information was given by the telephone company employee in an effort to cooperate with a police officer. At other times, it was a business relationship, the police officer usually having to pay \$25 for the information.³²

It was the policy of the telephone company to discharge immediately any employee who engaged in this practice. It was equally the policy of the company not to press criminal charges. This was consistent with its general policy of doing nothing which would bring public attention to the problem of wiretapping, and thus, as it feared, injure public confidence in telephone communications.³³

At times, the desire to cooperate with law enforcement led members of the special agents' division of the telephone company to warn police agencies that the victim of a wiretap suspected the tap, and had complained to the company.³⁴ On rare occasions, at the request of a high-ranking police officer, such as the chief inspector, the special agents' division would monitor a particular telephone conversation to aid the police in discovering the whereabouts of a suspect or in determining whether a gambling operation existed.³⁵ This service was performed with special readiness in cases of kidnapping.

There is no evidence, however, that the telephone company in Philadelphia gave the police the additional service of leased lines, such as they enjoy in other parts of the country. Under a leased wire arrangement, the telephone company can connect special listening posts in the police station itself to any telephone in the city at the main telephone company exchange frame. This does away with the necessity of a police officer climbing up a pole or hiding in a cellar. In certain cities, police make regular use of such

service, paying the telephone company a fixed rate for the leased wire.

Promiscuous and indiscriminate use of wiretapping by police, albeit for law-enforcement purposes, was revealed by our investigation. In the absence of any real control or supervision, there was no hesitation on the part of the police in installing a wiretap in any case and on the slightest suspicion. Although, as we have learned, a form was provided police wiretappers for requesting permission to install a wiretap, in the majority of wiretap installations this departmental form was never used. If the wiretapper thought he might hear something of interest, he put the tap on. This was contrary to the official police policy, and the specific directives of the police commissioner. Nevertheless, many police wiretappers with their own equipment were daily sampling telephone conversations without regard to established police procedures and policy.

Many police officers have reported hearing over tapped telephone lines conversations indicating infidelity of a spouse or other activities which would serve as a basis of blackmail. Some police wiretappers in the Philadelphia area have the reputation among their fellow officers of being capable of using such overheard conversations for their own personal gain, but no specific evidence was obtained of this kind of blackmail.³⁶

However, sufficient information was received from police officers engaged in wiretapping to indicate that certain police officers have been able to get themselves on the payroll of a gambler by means of wiretap information against the gambler which they have received.³⁷ Thus, as one police officer put it, "It was worth more to the officer involved to let the man stay in business than to arrest him." Only a half-dozen police officers were accused of this kind of practice. On the whole, Philadelphia police officers who engaged

in wiretapping were willing to "get on" a line at the slightest suspicion, but used the information they received for law-enforcement purposes only.

In the district attorney's office, where the equipment was so meager and only one or two county detectives had the technical knowledge to install a wiretap, the approval of the district attorney was required for the installation of a wiretap, and such installations were usually restricted to major criminal investigations.

After the *Chait* decision, there came a growing trend among law-enforcement officers toward willingness to acknowledge their use of wiretapping, even to the point of publicly proclaiming and defending it. This was illustrated in the spring of 1957 by the release to a local newspaper by the district attorney's office of complete wiretap transcripts relating to an investigation of certain labor union activity.³⁸ Telephone booths in a leading hotel had been tapped, and members of the district attorney's office learned that these booths were being used by persons with criminal backgrounds who were involving themselves in the efforts of a teamsters' local to organize employees of small restaurants in the city of Philadelphia. The overheard telephone conversations indicated that there had been opposition by some officials in the labor movement, and conversations were recorded containing threats to "beat up" some of the opposition. The complete telephone conversations, however, included mention of the name of the hotel, and some discussion unrelated to the labor activity, which named doctors, lawyers, and other persons who had nothing to do with the schemes and plans of the individuals under suspicion.

Without making any arrests and without charging any particular person with crime, the district attorney's office

released the complete text of the wiretap transcript in serial form to a Philadelphia newspaper. The paper published the text in daily supplements without editing out the conversation which did not relate to the labor organization planning. Following this release, the American Civil Liberties Union of Philadelphia reported the incident to the United States Attorney, on the theory that the Federal Communications Act had been violated by the divulgence of the wiretap transcripts.³⁹

The district attorney's response was that he did not have enough evidence to make an arrest, but that he believed it was his duty to release this information in order to protect the threatened individuals, and to expose an unlawful activity.⁴⁰ However, he stated to the American Civil Liberties Union that it was against the policy of his office to make such releases and that it would not occur again.

Shortly afterward, the district attorney's office engaged in an investigation of a "teen-age vice ring," and publicly stated that wiretapping of the owner of a model agency supplied the information which led to a number of arrests. During this highly publicized investigation and prosecution, which received extensive coverage in the local newspapers, three popular mystery magazines were published, each containing an exclusive inside story of the vice investigation in Philadelphia.⁴¹ Each story bore the name of a different county detective involved in the investigation as its author, and each contained purported excerpts from the wiretap transcripts of the telephone conversations of the model agency owner. These transcripts had never been used in evidence in any of the court proceedings. This, too, was brought to the attention of the United States Attorney by the American Civil Liberties Union of Philadelphia.⁴² The district attorney claimed that no one from his office released the wiretap information contained in the stories.⁴³ He indicated

that other law-enforcement agencies possessed transcripts. The police department denied that it had released them.

At an earlier date, in the fall of 1954, a newspaper columnist had released extensive excerpts from a wiretap transcript of the telephone conversations of a man who had been arrested and charged with being a numbers banker.⁴⁴ It was on the basis of these wiretaps that the arrest had been made. The district attorney's office had approved the columnist's having access to the wiretap transcripts, in the belief that the transcripts had been introduced in evidence at the preliminary hearing of the defendant, and, therefore, had become a public record. As it turned out, this was a mistaken belief, since the defendant had waived a hearing in the magistrate's court, and no evidence had been introduced. In the 1957 complaint by the American Civil Liberties Union, this 1954 publication was also reported.⁴⁵

We have seen that, as a matter of policy, law-enforcement officers chose to wiretap to obtain investigative leads, rather than to present a transcript in court. The major reason for this decision was to protect the sources of telephone line information, primarily the telephone company.⁴⁶ The secondary reason was to preserve secrecy regarding the use of this technique. Apparently police were satisfied that wiretapping was sufficiently useful as an aid to investigation or interrogation. Often, they used a wiretap transcript to obtain a confession by playing the suspect's conversations back to him. In many cases where this has been done, a confession has been obtained. In an important gambling case, a defendant suspected of being a leading figure in the illegal lottery racket pleaded guilty when confronted with the evidence in the wiretap record.⁴⁷

In the few cases where wiretap evidence has been introduced in court, bad results have been obtained. Some judges have complained that they can hardly hear the conversa-

tions because of the poor recordings and have found that the testifying police officer often attempts to explain what the conversations were about and to supply the meaning of the obscured sounds.⁴⁸

In another major gambling case, lack of preparation on the part of law-enforcement officers produced the spectacle of tapes being sampled apparently for the first time in the courtroom before the jury.⁴⁹ The police technician would keep the sound low until he arrived at a relevant portion and then increase the volume so the jury could hear. This resulted in an incoherent and confused presentation with no one being able to follow the evidence. Despite the efforts of the assistant district attorney to omit irrelevant portions, during one of the playbacks which the jury was supposed to hear conversation emerged concerning a crime not charged in the bill of indictment, and a mistrial resulted.

Police in Philadelphia are now generally of the opinion that the use of wiretap transcripts in court only jeopardizes the case, because it brings with it the danger of technical arguments concerning the source of the telephone information and the qualifications of the wiretapper which obscure the real issue before the jury, the guilt or innocence of the defendant. Also police believe divulgence of wiretaps panics the lawyers and the community, resulting in efforts to restrict law-enforcement wiretapping. The 1957 prohibition of wiretapping was a case in point, they say.

The police department and the district attorney's office in Philadelphia have made less use of electronic surveillance by devices and techniques other than wiretapping.⁵⁰ The various police agencies and the district attorney's office possess little equipment for this kind of investigation.⁵¹ The district attorney's office owns no pocket recorders, the police department only three or four. A total of perhaps two pocket

transmitters, used for broadcasting overheard conversations, are shared by the police department and the district attorney's office. They have a number of microphones for bugging purposes, but these are rarely used. The principal reason for this is the reluctance of the police investigators to enter premises to make an installation. They prefer to place a tap on a phone at a distance from the suspect's activity.

In cases of extortion or bribery which the victim has reported to the police, some use has been made of transmitters and pocket recorders to record a criminal solicitation. A typical situation in which the police would use a room microphone would be where a doctor had complained that a female patient was threatening to expose alleged personal advances by the doctor unless he paid her a certain sum of money. A normal police routine would be to advise the doctor to encourage the patient to return to the office and discuss the demand for money, after a microphone had been placed there for the purpose of making a recording.

The police department uses concealed microphones in its interrogation rooms and other rooms in the department, and microphones have been installed in the city prisons and the state penitentiary in the city of Philadelphia.⁵² The district attorney's office also has installed concealed microphones in an interrogation room and some offices.⁵³

Law-enforcement agencies in Philadelphia have not employed closed-circuit television for investigation purposes and have used an automatic camera only in rare instances. The police and district attorney's office do use two-way mirrors in their interrogation rooms. A two-way mirror, of course, is a flat glass, which to the suspect on the inside of the room looks exactly like an ordinary, everyday mirror. But anyone on the other side of the glass can see through it as if it were a window. Sometimes the two-way mirror is used to permit the victim of a crime to identify the sus-

pect without himself being seen. It is also used at times when two suspects are left alone in a room and allowed to believe that they are unobserved and unheard. The two-way mirror makes it possible for detectives to observe their actions, and a concealed microphone permits the investigators to overhear their conversations.

A major intelligence activity of law-enforcement agencies in Philadelphia involves the use of informers and undercover agents.⁵⁴ These are the "human bugs" of the police force. The police will readily admit that the backbone of any detective bureau is its informers. These informers, as a general rule, are participants in crime, who for some personal motive seek the friendship of police. The reward is different in each case, and it is aimed at the particular needs of the informer. In some cases, police have given drug addicts drugs in order to get them to inform. Some informers are simply paid cash for their services. Others are granted freedom from prosecution, or the promise that the police will ask the court to be lenient in their case. An informer may single out a particular detective and constantly produce useful information for this detective. In return, he hopes to be overlooked when arrests are made. One Philadelphia detective has the reputation of being able to discover the whereabouts of stolen property, newly arrived hoodlums, or any other piece of underworld information merely by calling a number of informers.

An informer is rarely, if ever, used as a witness in court. It would destroy his future value as an informer. Furthermore, he would make a poor witness, since his credibility could be destroyed by a withering cross-examination concerning his own criminal behavior. We are not here discussing the informer who comes forward to testify against a co-defendant in a single criminal case, since the activities of such an informer do not involve eavesdropping, but

merely the giving of testimony. The informers who are eavesdroppers are those who are permitted by the police to continue to associate with the suspects against whom they are informing for the purpose of gathering evidence and information. This is a constant and current practice in Philadelphia, and no criminal organization can feel itself impregnable.

In 1953, the police and district attorney's office began to make more frequent use of police undercover agents.⁵⁵ This program was aimed at getting evidence which would stand up in court. The undercover men have almost always been rookie police officers who were taken out of the police academy prior to getting their badges. It was essential to pick men who had not yet been identified as law-enforcement officers. Their fellow students at the police academy were told that they had been disqualified as police officer candidates, or that previously unrevealed criminal record had been disclosed which caused their dismissal. Elaborate steps were taken to provide the rookie with a paper criminal record, including criminal registration card, mug shots, and fingerprints.

These undercover police agents were principally used in the investigation of illegal narcotics sales. The agent's most difficult task was becoming acquainted with drug peddlers in a way that would encourage their having trust in him. This was accomplished in one case by having the agent frequent a bar known to be used by drug peddlers. One evening a police raiding squad attacked the bar and lined the customers up against the wall. When the sergeant in charge of the raid spotted the agent, he slapped him in the face and, calling him by his assumed name, demanded to see his criminal registration card. After pretending to review the card, the sergeant told the agent he knew he was a drug addict and warned him to keep out of his district.

The agent was assured of a warm welcome by the drug peddlers after the raiding officers left.

Over a period of three years, four hundred persons were arrested and charged with selling drugs as a result of the activities of fifteen undercover police agents. Convictions were obtained in 99 per cent of the cases. The undercover police agent took the stand in each case and personally identified the man who sold him the drugs.

After the first two drug raids, it became increasingly difficult for undercover police officers to make contact with drug peddlers. Word had got around that a strange male seeking drugs might be "the man," which is the designation for a police officer. The law-enforcement agencies then decided to use undercover policewomen. Five girls were assigned to this work and in the course of a few months produced a hundred and twenty arrests. Indeed, the women faced greater dangers than the men, since there was a constant effort on the part of the drug peddlers to make prostitutes out of them.

The district attorney's office and the police department were proud of their intelligence program and were convinced that this was a fair means of catching drug peddlers. The courts held that entrapment had not been used, since the police officers did not create the criminal design in the minds of the persons arrested, but, on the contrary, the peddlers had been ready to sell drugs to the inquiring officers who disguised themselves as addicts.

Some judges and law-enforcement officers have since felt a creeping doubt as to the fairness of the arrests. This doubt was engendered by a letter sent by a convicted prisoner to a judge who presided over one of the drug trials.⁵⁶ The prisoner had been arrested as a result of the activities of one of the pretty undercover policewomen. The prisoner protested in the letter that he was not a drug peddler, but

that he was approached by the lady agent and given the impression that all he had to do to receive her favors was to obtain some heroin for her. He said that it was well known in the area where heroin could be obtained, and he went to a source which was readily available. He insisted, however, that his only purpose was to succeed with the girl, and that he wasn't in the business of selling drugs. The judge was impressed by the letter and sent it to the district attorney.

Of course, the statements in the letter could be false, like those of many convicted persons who continually deny their guilt. However, it is believed by some law-enforcement officers that an undercover agent who sought advancement and reward for making a number of arrests might, in his enthusiasm, induce people to involve themselves in the drug traffic who ordinarily are not in that traffic. This is especially true when girls are used. The protesting prisoner is still in prison, and no cases have been re-examined. However, the doubt persists.

In Philadelphia prior to the summer of 1957, private eavesdropping rivaled, but never surpassed, law-enforcement activity. For the right amount of money, anybody in Philadelphia could have a wiretap installed on anybody else's phone or a microphone concealed in anybody else's office or home. Eavesdropping assignments ranged from simple divorce cases to high-level labor union activities. Perhaps the greatest users of the wiretap and the bug were business houses, who employed them for internal security purposes. The limiting factor, of course, was the price to be paid; and this usually was high enough to make electronic surveillance an unusual procedure in private investigations.

Usually a potential customer for this kind of service is totally in the dark as to how to get the job done. He will

raise the question with his attorney, and the latter will either be in contact with an available technician himself or will know another attorney who is. Sometimes the attorney will bring in a private detective. Another class of customers, typically large business establishments with security departments, will have special police contacts, to whom they can go directly. A third group of customers will go directly to a private detective. And still a fourth group will try to do the work themselves.

The actual wiretapping or installation of the microphone will be done by a police officer; a telephone company employee; the one or two private investigators who specialize in wiretapping; sound-recording people; or, as in one case uncovered by our investigation, the employee of a television and radio repair shop.⁵⁷ Private detectives, themselves, do not as a rule have the equipment or the technical knowledge required to install a wiretap.

There are forty private detectives in the city of Philadelphia. Many will accept a big case requiring wiretapping or the use of a microphone. Most such cases come to them through attorneys and relate to divorce proceedings.⁵⁸ In a typical case, one spouse is trying to get sound-recording evidence of the infidelity of the other. The private detective will seek out a technician belonging to one of the above categories. About a dozen private detectives in Philadelphia handle this kind of assignment more often than the others and have a regular wiretapping contact. Although there is a private detective association in Pennsylvania, to which most of the private detectives in Philadelphia belong, private detectives are traditionally secretive, do not trust one another, and do not discuss with one another their cases or the techniques they are using. No uniform pattern has developed among them, and each will get his wiretapping

or bugging done in the easiest and cheapest way known to him.

For example, the files of one private detective indicated that he engaged in wiretapping or bugging in domestic relations cases. He did not possess any wiretapping equipment, and although he at first denied any knowledge of wiretapping activity, when he was confronted with his own filed reports he admitted that he used an "expert" to do the work for him.⁵⁹ Further inquiry revealed that this expert was a popular police captain, who possessed expensive automatic recording equipment. The investigation also disclosed that the police captain himself did not make the electrical connections, but employed a former telephone company employee to go along with him and do the technical work. The usual price charged by the captain for each job was \$200. The statements of the private detective and of the police captain admitting this practice were received by the police department, but no disciplinary action was taken.

Another private detective in Philadelphia, who has been accused of putting a wiretap on the attorney general of Pennsylvania, initially denied to investigators that he ever had engaged in wiretapping or bugging and demonstrated that he had no equipment for this kind of activity. The puzzle was solved, however, when investigators reviewed the detective's record of cash disbursements and found that large amounts of money, averaging around \$300, had been paid at intervals to a sound-recording company in the city of Philadelphia.⁶⁰ Under subpoena, issued by the district attorney, the proprietor of the company produced his records and readily admitted that he installed wiretaps and bugs for the private detective on a rental-of-equipment basis. Almost every one of the cases involved a domestic relations squabble. In each case, the private detective insisted, he had obtained the consent of the subscriber to tap the phone, the

subscriber usually being a suspicious husband. It was generally believed by private detectives, as well as the district attorney's office, that a tap put on the phone of a subscriber with the subscriber's consent was not a violation of the Federal Communications Act.

The expense involved in this kind of investigation was indicated in a typical case handled by this private detective. The husband who had retained the private detective to have his home phone tapped for the purpose of determining who his wife's callers were while he was at the office, desired as much secrecy as possible. To maintain this secrecy, a separate apartment was rented by the private detective, at the husband's expense, and an extension of the husband's telephone was installed by the telephone company in this new apartment. The total cost for the apartment was \$1000. The sound-recording company installed automatic recording equipment there, at a rental of \$400 per month, and agents of the private detective kept up an uninterrupted monitoring for about ten months. The total cost to the husband, including the private detective's fee, was \$15,000. The evidence acquired through the wiretap led to the husband's receiving an uncontested divorce from his wife.

One private detective engaged in a wide variety of cases involving electronic surveillance. Domestic relations cases predominated, but he also placed microphones in hotel rooms and in law office conference rooms to make a clandestine record of business meetings. He tapped the telephones of employees in one business concern at the request of their employer, for the purpose of checking their loyalty. He placed hidden microphones, stationary mikes as well as a lapel mike worn by an undercover operator, outside a building being picketed by a labor union, to record the conversations of the pickets. The equipment and tech-

nical work were all provided by a sound-recording company.⁶¹

In the case involving the labor pickets, the total cost to the private detective of the electronic surveillance supplied by his sound-recording company, for a twenty-two-hour period, was \$162. The invoice of the sound-recording company showed that the detective was charged \$12.50 for the rental of a brush headset, \$15 for the rental of a lapel microphone, \$4.75 each for the rental of seven long-playing magnetic tapes, and \$4 an hour on weekdays and \$6 an hour on Saturday for the services of the undercover operators who worked the equipment.

The price charged by the sound-recording company for the rental of a recording machine was usually \$100 for the first week and \$50 a week thereafter. In one domestic relations case, the private detective paid the sound-recording company \$400 for the seven-week rental of the recording machine.

Another source in Philadelphia for a wiretapping or bugging technician is a manufacturer and supplier of wiretap equipment.⁶² One private detective agency uses this supplier exclusively. The supplier has two experts associated with him, whom he sends out to make installations. They are available to install a wiretap, to set up a hidden microphone, to set up automatic camera equipment, or to install a burglar alarm. Recently he employed a former police officer whose principal police assignment had been wiretapping. This former officer became available for private wiretapping or bugging assignments.

Amazing results have been achieved by these technicians, and their services are more and more in demand. Puzzling thefts in an industrial warehouse remained unsolved until one of these specialists installed a hidden camera which took silent pictures in subdued light and automatically changed

frames. When the film was developed, front-face views of the thief appeared. This camera has been used successfully in other types of undercover activity for business concerns.

Private detectives have obtained these services for large food chains, as well as individual clients. The client is usually not aware that the private detective agency has farmed out the wiretapping or bugging assignments.

Our investigation disclosed a further, quite simple, but almost unbelievable way for a private detective to get his wiretapping done. This story has been thoroughly checked and found to be true.⁶⁸ A private detective in Philadelphia, with a domestic relations case in which he wanted to install a wiretap, entered a radio and television repair shop and walked directly over to the young man behind the counter. The two men had never met before. The private detective produced his license and badge and told the salesman that he wanted to have a wiretap installed in a domestic relations case, but that he didn't know what he would need or how to go about it. The salesman, without any hesitation, began to describe the electrical equipment that would be necessary, and pulled down from various shelves a headset, condenser, wire, and pinch clips. The private detective studied the equipment and then confessed to the salesman that he wouldn't know the first thing about how to make the necessary connections. "Where is the place you want tapped?" asked the salesman. The detective told him. "All right," obligingly replied the salesman. "If you can wait a few minutes, I'll go down there with you and set it up for you."

This is exactly what happened. The salesman and the detective drove out to the apartment house involved. The salesman located the terminal box in the backyard of the apartment house, and in clear daylight opened it and be-

gan to test the various pairs. The detective had gone to a telephone booth and kept dialing the number of the telephone he wanted tapped. Through this "sampling system," the correct pairs were finally located, the pinch clips were attached, and a long line was dragged from the terminal box to the detective's car where he sat with a headset and listened to the telephone conversations. The charge for the salesman's services including equipment was \$20.

One private detective in Philadelphia reported an ill-fated experiment in doing the wiretapping himself.⁶⁴ An important and remunerative domestic relations assignment was brought to him, and the wife client insisted on installing a wiretap on the home phone. The private detective, who owned no equipment, was referred to a well-known manufacturer-supplier of wiretap equipment by a police contact. This supplier had publicly insisted that he never furnished equipment to private detectives, but only to law-enforcement agencies, through official department requisitions. The private detective, however, had no trouble at all, and at his request was immediately supplied with a complete wiretapping outfit equipped for automatic recording. The supplier gave him written instructions on how to use it, and the private detective was about to leave with his newly acquired equipment when the supplier asked him to sign a form. The detective read the form and then signed it with a grimace. In substance, the form was a certification that the equipment just purchased would be used only in police work.

The private detective followed the written instructions given him by the supplier and installed the automatic recording equipment in the cellar of the house where the tapped phone was located. The investigation was shortlived, however. On the very first day, the husband walked down into the cellar and found the recording equipment. The pri-

vate detective ruefully reported that the irate husband completely destroyed the equipment.

Secret listening by means of a small pocket recorder is usually done by the private detective himself without the aid of a hired technician. Most private detectives have bought either a small pocket recorder using magnetic tape as a recording medium, or a pocket recorder using wire as a recording medium. Both items can be rented from suppliers, but if the detective has much use for them the rental is usually so high that it pays him to purchase the machine. Each machine comes equipped with many accessories, including a briefcase container, a wristwatch microphone, which won't tell time but which to the uninformed looks like the real thing, tiny lapel microphones, and induction coils which can be attached to a telephone base for induction wiretapping.

One private detective agency was employed by a bakery concern to see if it could solve a serious case of pilfering.⁶⁵ The officers of the bakery suspected that a platform man was receiving pay-offs from drivers for giving them merchandise in excess of their invoices. The private detective agency placed an undercover agent in one of the company's plants in the guise of an employee. This agent carried a Minifon on his person during the entire case and recorded conversations with various employees. He finally was able to become friendly with the shop steward in the plant, who turned out to be the guilty party. The recordings were played for the union's business agent, who in turn confronted the shop steward with the evidence and forced his resignation.

This private detective's invoices showed that he received a fee of \$694.40 for his services on one installation in the bakery company, and a fee of \$393.10 for services on another installation. The fee was made up as follows: On

the first installation, the cost for the investigator, who was on the job for a month, was \$300; costs for three other investigators engaged in short assignments were listed at \$65. An interesting item of "numbers plays by inside operative for evidence" was listed at \$20. The price for the portable recorder, transcription to tape, six batteries, spools of tape and wire used in this equipment, was listed at \$300. On the second installation, the cost for one investigator for a two-day period was listed at \$60; taxi fares at \$3.10, and automobile transportation at \$30. An additional \$300 was charged for the use of the portable recorder, batteries, spools of wire, and the transcribing from the wire. The total purchase price of a Minifon portable wire recorder is in the neighborhood of \$300. The bakery company was charged \$600 just for the rental of the recorder.

Private detectives were not the only ones who purchased or rented pocket recorders. The sales records of one distributor of these recorders were subpoenaed by the district attorney's office.⁶⁶ The records disclosed that a number of leading law firms had purchased pocket recorders, complete with briefcase and wristwatch mike attachments. Two newspapers had purchased pocket recorders for their reporters, and a number of large business firms had ordered one or more. The customer list included lawyers, doctors, salesmen, and police officers.

A pocket recorder representative stated that a large number of people in Philadelphia rented pocket recorders for single occasions.⁶⁷ They wanted the machines for parties, gags, and other playtime activities. He added that one lady who rented a machine from him said that she needed it because her psychiatrist had asked her to record secretly her husband's sexual advances, to help him determine where her problems lay.

Intricate and expensive wiretapping equipment is readily

available to private detectives, despite the announced policy of most suppliers that they would not sell to private detectives. The pocket recorder representative mentioned above also carried the complete line of wiretap equipment of a local manufacturer-supplier, and exhibited this equipment to anyone who showed an interest in purchasing it. The equipment was also available to private detectives through other suppliers throughout the country, either by direct approach or with the help of a policeman contact. But, as we have shown, private detectives preferred as a rule not to purchase their own equipment, and used the equipment and services of expert technicians instead.

About a dozen Philadelphia police officers did private wiretapping for extra money. They worked for lawyers, labor unions, security chiefs in business houses, and private detectives. One of our investigators interviewed some of these police officers on a "no names" and "If I'm ever asked I never saw you in my life before" basis. On the information actually received by him from these officers he set up the following typical dialogue.

Question: How is contact for work made?

Answer: There is no such thing as soliciting for this type of work. It has to come from a close friend. This does not mean that any work would be turned away, but it has to be brought to us.

Question: Where does work come from?

Answer: Lawyers that are familiar with this type of work, or who have a lawyer friend that is familiar. By familiar I mean a former assistant district attorney or one who was involved in wiretap cases, and was forward and open-minded enough to ask questions. Today there are very few criminal lawyers who do not have a contact for this work.

A number of police above the rank of patrolmen are obligated to politicians and will try to get this kind of work done for them. This is done, but not often, as it leaves the politician in a bad position with the officer involved.

Racket people (upper class) that are paying protection to certain squads have various needs for this type of work and can get it because they can afford to pay and can't afford to ask for police help when they are being bothered.

Various large companies that have originally complained to police through proper channels have become familiar with the men who do this work and its results. A friendship between the security personnel and police during a job generally establishes that they can get the work done for a fee and get a more personal and speedy job.

Private detectives generally look for police to do this work, but unless they are trusted (or they reach a hungry cop) it won't be done.

Unions will use this type of work and can generally get what they want because they have contacts and money. These are high-level unions, not the small locals.

Question: What is the relationship between police and telephone company personnel?

Answer: Police in this type of work generally have a few low-level contacts for a price. This would be a contact in a specific telephone exchange area. Friendships are cultivated among linemen for material to make a professional-looking tap. It cannot be said there is any specific level for telephone company contacts as they are all over.

Question: What types of information and material do you people get from telephone company contacts?

Answer: If it is a wiretap going in, we get the pole and line information (where the phone appears). This information is also needed to check to see if the phone is being tapped. If a number is picked up on a tap, we get the name and address of that phone and the line information if it is necessary. If the contact is good, he can keep you informed if trouble appears on your tap. A lineman can sell or give wire hardware and mikes if he wants to. This seems to be easy for them, as I have never heard of anyone having trouble getting it.

Question: How many officers have telephone company contacts?

Answer: A low-level cop has no trouble getting a low-level contact, either by making his own or getting a fellow officer in the business to help him. There are very few high-level contacts except among the high-level officers. A man working for a high-level officer on leaving may be able to keep his relationship with the telephone company and thus keep a high-level contact. The high-level contacts are under the impression that they are only giving information for official police business, and they will invariably tell you that they will call you back in your office. If you are trying to get information from them using a high-level police officer's name, you will generally get into trouble. It is easy to make contacts with money and through a fellow officer.

Question: What are the prices paid for information and material?

Answer: Fifty dollars will get you started with information for any tap. If you get involved with other numbers, it might not cost you any more unless the man you're using wants it. It is unusual to go beyond the first \$50 for information. If it is racket

work for private profit, the telephone contact is usually a partner to it. Material varies. I've heard as low as \$10 for a thousand feet of wire with hardware and as high as \$25. Phone mikes have been had from anywhere from \$1 to \$5. A phone for dummy work has been sold for \$25.

Question: How much private wiretapping is done by police?

Answer: Private recording taps, I figure that a good man will get about six a year. I do not believe that there are more than a dozen or so men that are doing private work.

Question: Do police do labor tapping?

Answer: During any big strike there is usually some talk about it but it would go to the big boys or their trusted men. There's a lot of money in it, and even with a lot of people cutting up the fee, the man doing the job will make a few hundred a week. Both union and industry want the same thing. They want to know what the other's moves are going to be before they come off. They will usually start with a call to the labor squad from industry. When the ball starts rolling, there will be at least five or six private jobs being done. Union will use more than industry. At least union will use cops. I don't know who industry would use, since I have never heard about it. If they use cops it would be at a very high level and a lot of money. You don't hear much about that. The union gets pretty sloppy as they don't use good sense and generally get somebody in trouble.

Question: How about private detectives?

Answer: Most of them don't know the score and have to have an in, in order to get anything done. When you get their work, they don't tell you what the job is, they ask you to put a tap on such a phone

and give the number or rent the equipment and the tap. I have received as much as \$500 for the tap and equipment and as little as \$50 for putting in a line. From what I have seen, it's usually divorce work that they have.

Question: What kind of equipment is there around for private wiretapping by police officers?

Answer: Every wiretapping cop has a headset to begin with. Some are better than others. A headset with a condenser is just for listening. Then there are headsets with a dial attachment for picking pairs. There are coils used for picking up the conversation that can be fed into the recorder. There are coils connected to transmitters to send the conversation over the air to be picked up at some other point. Most common is a direct line tap into the line of the phone you want, fed to an automatic control recorder. There are three or four different kind of pulsers that give you the phone number being dialed. The best of these we call the pen register and it is sold in New Jersey. There are big boxes that the department has that are a combination of automatic tap equipment.

Wiretapping and bugging in labor controversies has been frequent in Pennsylvania. In a recent major strike in Philadelphia, the company had leased meeting rooms in two downtown hotels. The union obtained the services of a police wiretapper, who tapped and bugged the telephones in these hotel rooms so that the telephone conversations of the company people, as well as their room conversations, could be recorded and monitored by the union.⁶⁸

On the other hand, a large company in another major city in Pennsylvania hired three wiretappers to tap the president of the union to determine if there was going to be a strike.⁶⁹ The equipment they used was a transmitter which

was actually installed on the cable by a telephone company employee, and a receiving post was set up to receive the broadcasted tap information. The union was tipped off, but the wiretappers were able to remove the transmitter before it was discovered, since they had overheard the tipoff on the phone.

Perhaps the most extensive wiretapping operations involving labor accompanied a major union election in Pennsylvania. One of the candidates hired an expert wiretapper to tap his opponent for the purpose of picking up information which might embarrass him and thus disarm him in the pending election.⁷⁰ The wiretap not only produced evidence that the opponent was unfaithful to his wife, but also disclosed the disloyalty of a close associate of the candidate who had ordered the wiretapping.

A significant use of electronic equipment in a labor dispute was reported by an investigator for the study. A company had obtained an injunction against the picketing of a striking union, but the union continued to picket with the understanding that the judge would not enforce the injunction. The security head of the company set up a movie camera with a sound track on the picket line in front of the company's gates. He then had a coffee cart sent out to the pickets and obtained a scene of a number of strikers milling around the cart in an animated fashion.

A microphone had been suspended out the window of his office to pick up the sounds, and a confused assortment of conversation was being recorded. The security head pulled up the microphone and, placing it near his lips, muttered into it, "To Hell with Judge _____ and his injunction. We don't care!" He then let the microphone down again. The resulting motion picture and recorded conversation made it appear that one of the picketers had uttered the insulting statement. The movie and sound track were sent

to the judge, and very shortly His Honor ordered state police into action.

Whenever possible, companies have sought to bug the rooms used by union leaders holding conferences. They have explained this practice by stating that their purpose is to learn the *real* troubles besetting the union leaders so that they can deal with them realistically.⁷¹

Modern business has no reluctance to eavesdrop, especially on its own personnel. Usually an employer first learns of the practicability of a hidden microphone and a wiretap when he seeks help from an attorney or private detective to solve a security leak or a serious problem of pilfering. Many businessmen today are "tap conscious" after reading magazine articles on the subject and discussing it with fellow businessmen. After one try at it, the employer usually becomes a confirmed eavesdropper and is ready to set up listening posts throughout his plant or place of business.

Philadelphia businessmen are no exception. Large companies in Philadelphia were first introduced to the protection provided by electronic equipment when automatic burglar alarm systems were installed. Such systems have developed from the mere ringing of a bell when a door or window was forced to present-day equipment which will give a signal anywhere in the city as a result of the mere presence of an unfamiliar physical object in the room.

A number of Philadelphia firms have installed this kind of equipment in their warehouses and plants and have thus become acquainted with the manufacturer-supplier of wiretap and bugging equipment. A series of thefts or suspicions on the part of the employer concerning the loyalty of an employee have generally resulted in the employer's use of wiretapping and bugging procedures.

An executive of a large whiskey company was receiving threatening calls on the telephone. The services of a wire-

tapper, who monitored the calls, and the cooperation of the telephone company finally trapped the caller.⁷² Another employer suspected the company's buyer of receiving kick-backs from suppliers. A private detective was contacted, who brought in a wiretapper. The wiretapper tapped the telephone of the buyer and connected the tap to a recorder, which was hidden in a closet in the office of the employer. A few days of monitoring the telephone conversations of the buyer produced evidence supporting the employer's suspicions.⁷³ The buyer was fired.

In one department store, in a small town outside Philadelphia, all the telephones of the executive personnel were bugged or tapped. The lines from the tapped phones were all brought into a listening post in the manager's office, where he could, by throwing various switches, hear over a loud-speaker the conversations on any of the phones involved.⁷⁴

The managers of two chain stores in Philadelphia once tapped the pay phones in the stores and connected the taps to automatic recording equipment.⁷⁵ The work was done by a private wiretapping specialist who is widely employed by industrial firms. The pay phones were tapped principally to overhear conversations of employees, rather than those of customers.

In addition to using electrical equipment to check on employees, store executives have employed eavesdropping devices as a security measure against theft. One department store in Philadelphia has used closed-circuit television to detect shoplifting from its counters. Generally, the technique is to use one live camera and a number of dummies because of the expense of the equipment. An agent of the company monitoring the television screen can radio down to a floor detective as soon as he observes a case of shoplifting.

Closed-circuit television has been suggested as a means of keeping under surveillance large warehouse and plant areas which ordinarily would require a watchman's making a lengthy trip on foot. The cameras can be automatically swept across the floor and so can cover extensive areas.

The use of concealed automatic cameras has at times supplemented the concealed microphone in plant theft investigations. A private eavesdropper who engaged in all kinds of electronic surveillance for business concerns reported three occasions on which the automatic camera solved cases of theft. In one, the employees of a large television and radio studio in Philadelphia had been constantly finding items gone from their lockers. Obviously, a thief had been going through the lockers, but no one in the company could determine how and when. The private specialist was brought into the case, and he installed a hidden camera inside a loud-speaker attached to the wall. This camera would automatically and quietly snap a picture whenever any one of the lockers was touched. It would take a good picture even in the light produced by a match, and would automatically change the film to the next frame. The film was developed after the first day's use, and a front-face picture was obtained of one of the porters employed by the company opening a locker and inserting his hand.

An industrial concern reported constant complaints of weight shortage from its customers and believed that someone in the company had been tampering with the scales for the purpose of appropriating to himself the material not sent to the customers. An automatic camera was concealed above the scale by the private specialist, and in a short while a photograph was obtained of an employee tampering with the scale mechanism.

In another case, a secretary had been subjected to petty

and vexing pilferage from her desk. She found that postage stamps, petty cash, and a number of other items were constantly disappearing. Her desk was one of many in a large secretarial pool area. The private specialist, who was retained by the employer, installed his hidden camera in a lamp fixture and directed it at the desk in question. The developed pictures, after two days' exposures, showed five fellow secretaries opening the desk at different times.

The concealed microphone has found another use in the business world. As in California, and indeed other states, the closing room in the automobile agency, where the final discussion concerning purchase of the car takes place, has been bugged, for the purpose of eavesdropping on the private conversation of the customers. A similar use has been made of microphones at conventions and other places where new products are shown, to overhear the personal observations of members of the public concerning the product.⁷⁶

A private eavesdropper never can foresee what his microphone will pick up. Our Philadelphia investigation disclosed a bizarre situation arising out of what would ordinarily be a routine bugging installation in a domestic relations case.⁷⁷ The wife, who had begun divorce proceedings against her husband and who suspected him of meeting women in a hotel room, obtained a private detective for the purpose of having a microphone installed in the hotel room. The bug was set up, and in another room in the hotel two agents monitored a tape recorder to which the microphone was connected. After a number of days of listening, which confirmed the wife's suspicions, a conversation was picked up one evening which suddenly caused the monitoring agents to listen with special interest. A man named "Pete" had entered the room. The following is a version of the conversation which was recorded, which we have modified to preserve anonymity.

Pete: We can't get the guy, he just won't show. We're going to have to go back to New York.

Subject: All right.

Pete: You owe us some money.

Subject: How much?

Pete: \$1200.

Subject: Wow! I never expected anything like that. Look, I'm willing to pay your expenses, Pete.

Pete: You can't pay me two bits. My part you got as a favor. You never had a friend so good, but the boys I brought with me have to get paid.

Subject: \$1200! That's a lot of money.

Pete: Well, what did you expect? You know I got the best boys in New York for this job. Do you know who I got? I got two boys off a strikebreaking gang. They're experts in breaking skulls. I pulled them right off a job. They get \$250 a day. Then there was the stolen license plate we had to get, right? That cost \$200. Then there was the gun. Right? That cost \$100. You're getting this service at one third of what it should cost you, because of friendship. Me, you couldn't give two bits to. My part was for a favor. The boys have got to be paid and their expenses.

Subject: Gee, I didn't know you were gonna do all that.

Pete: What do you mean? Didn't you call me up in New York and say that your wife's lawyer was driving you nuts and that you had to get rid of him, and quick. And didn't I tell you I would bring boys from New York to do the job? How else do you get rid of a guy except by dumping him in the river?

Subject: I thought you were going to do something else, like arrange things with the judge.

- Pete: Look, you don't call me up in New York to bring two boys over to fix a judge.
- Subject: Now look, I want to pay your expenses; I'm willing to give you \$200, and I will write out a check.
- Pete: Not two bits, you don't pay me two bits. But the boys have got to be paid, and if you don't pay them, somebody will pay them. Look here, I'm getting pretty damn mad about this, I'm surprised you should cheat a friend like this. You know I have never hurt anybody for money. But for a principle, that's different!
- Subject: Look, Pete, be reasonable.
- Pete: Forget it! I'm leaving, and the boys are going to be paid, and you're going to be sorry for it.

The door was heard to close, and for a moment there was silence, interrupted only by the audible tapping of fingers on a desk. Then the subject put in a long-distance call to New York, and the following conversation was recorded, again modified for the purpose of this report:

- Subject: John? Good, listen, Pete just left. He's real mad at me. He wanted \$1200 for a job that he didn't even do. What kind of a guy is he? (Pause) Oh, a gang? A lot of influence? Oh. Well, he said something about my being sorry. He wouldn't hurt me, would he? (Pause) Oh, he would. Well, gee, you don't think I ought to pay him, do you? (Pause) Oh, I should, huh; well, I better hang up and run after him before he leaves town.

LAS VEGAS

Prior to July, 1957, there was no legislation in Nevada regulating or dealing with the subject of wiretapping or electronic eavesdropping.¹ As in the case of Pennsylvania,

law-enforcement authorities in Nevada interpreted this absence of law to mean complete license for police wiretapping. The district attorney's office, the sheriff's office, and the police department in Las Vegas all wiretapped and bugged whenever the occasion arose.²

The district attorney's office owns only a few pieces of equipment and depends on renting wiretapping equipment when it is needed.³

The sheriff's office also engages in wiretapping and bugging, principally in prostitution cases.⁴ Its equipment is meager. It has no transmitters, and none of its recorders operate automatically. However, the sheriff's office at the time of this investigation was contemplating the purchase of transmitters from a California supply house.

As might be expected, most of the law-enforcement tapping done in Las Vegas is done by the police department. The police department has purchased about \$2000 worth of electronic equipment for tapping purposes from a Las Vegas electronic supply house.⁵ This includes automatically operated recorders, microphones, and standard wiretapping equipment. Although the police believe better equipment can be obtained in Los Angeles, they have chosen to deal with the local supply house in the interests of good will. They also feel that the equipment will need constant servicing, and this can be arranged more easily and economically if the person servicing the equipment is also the supplier.

Police wiretapping is aimed principally at the call girl racket. It is also used in narcotics investigations and burglary cases. A concentrated effort is directed at transient thieves, and wiretapping and bugging are used to locate them in the Las Vegas area. Las Vegas hotels aid the police in this activity, and the switchboard operators in the

hotels make the job of electrical surveillance by the police a simple one.

Las Vegas police believe that tapping has been an effective police weapon.⁶ They indicate that often a tap placed for one purpose produces evidence of another, unsuspected crime. An example of this was a case in which Las Vegas police tapped the telephone of a madam in a house of prostitution. The conversations held by this person indicated she was engaged not only in the call girl racket, but also in petty thefts and in conspiracy with a Los Angeles counterfeiting ring. In one call Los Angeles racketeers asked her to help distribute counterfeit bills. When the police learned that the counterfeiting gang was coming to Las Vegas for a brief vacation and intended to visit the madam, they obtained warrants, waited until the gang had arrived, and raided the house of prostitution. The raid produced a large quantity of counterfeit bills, as well as evidence of narcotics peddling.

The Las Vegas Police Department cooperates closely with the Los Angeles Police Department.⁷ In fact, Las Vegas police consider their city another section of the Los Angeles community. In one instance, Los Angeles-Las Vegas police cooperation resulted in the apprehension of a robbery and safecracking gang. This gang operated throughout California and in Las Vegas, and was made up principally of Las Vegas and Los Angeles hoodlums. They met regularly in a Los Angeles hotel room, and the police in Los Angeles were able to get an adjoining room and listen in to the conversations by means of a concealed microphone in the wall. Bugging and tapping by Las Vegas police aided the Los Angeles police in the final stages of the surveillance.

Law-enforcement wiretapping in Las Vegas has never been used for the purpose of obtaining evidence, but solely as an aid in investigation.⁸ This is a law-enforcement policy

and is not made necessary by Nevada law. Under Nevada law, evidence is admissible in court regardless of the manner by which it is obtained.

All three law-enforcement agencies, the district attorney's office, the sheriff's office, and the police department get excellent cooperation from telephone company employees.⁹ Although such cooperation is not officially given by the Southern Nevada Telephone Company, representatives of law-enforcement offices are supplied, on request, with pair and cable locations for police installation of wiretaps. In addition, when requested by law enforcement, employees of the telephone company will monitor telephone conversations at the main frame of the telephone company offices. This additional cooperation permits the law-enforcement agency to conduct electronic surveillance with a minimum amount of equipment. Also, as an aid to law-enforcement wiretapping activities, the telephone company has extended leased lines to law-enforcement offices, so that telephone conversations occurring in any part of the Las Vegas area can be secretly and safely monitored in a specially set up room in the district attorney's office, the sheriff's office, or the police department.

Despite this excellent service and the lack of control or restraint, Las Vegas law-enforcement offices, although willing to admit wiretapping practices, claim to have occasion for wiretapping only rarely. For instance, the district attorney could not recall having to place a wiretap during the year 1957. Both the sheriff's office and the police department reported they had occasion to install a wiretap only four or five times. Actually, however, wiretapping is used by law-enforcement officers for routine law-enforcement purposes. Also, in 1956 and 1957, there were indications of extensive wiretapping of the police by the city attorney, and of the city attorney by the police. As a matter of internal

security, the police department has tapped police officers periodically.¹⁰

Law-enforcement agencies claim that they have not as much need to use wiretapping as do those in some other cities, since they have no illegal gambling racket. They say that with gambling legal in Nevada, there is little or no organized criminal activity or corruption. It is chiefly in the investigation of such criminal activities that wiretapping is used in other cities.

Other observers of the Las Vegas scene do not agree with this picture of cleanliness and honesty painted by Las Vegas law-enforcement agencies. Federal investigators, a newspaper publisher, and law-enforcement officers in neighboring states point out that Las Vegas is controlled by racketeers who run the gambling casinos. Fearful of restrictive laws that may be passed in the future, these gamblers are continually seeking the protection of legislators, judges, and public officers, according to these sources. In addition, there is constant opportunity for local police graft. A principal item of graft involves alleged pay-offs to law-enforcement officers to look the other way when additional gambling tables are placed on the floor without the payment of an additional tax.

Another area in which law-enforcement protection is sought by the gambling leaders centers around the houses of prostitution. Casino owners want to have girls available for big betters and need police help to ensure that there is no interference with the good times of wealthy visitors. Thus, a fruitful field for bugging and wiretapping exists, regarding which there is a blank page in Las Vegas law-enforcement records.

Bugging is admittedly done by law-enforcement officers on a wider scale than wiretapping.¹¹ A bug is put in a visit-

ing hoodlum's hotel room as a matter of course, to see what he is up to.¹²

Police in Las Vegas make frequent use of informers. As an inducement, police generally promise them leniency in their own cases.¹³ They point out that they cannot afford to promise immunity from prosecution, because Las Vegas is too small a place to permit informants to commit burglary or other crimes without prosecution.

The police also make use of photography, principally to photograph transient hoodlums for identification. There is no evidence of police use of closed-circuit television.

Most searches and seizures conducted by law-enforcement officers in Las Vegas are done without a warrant. Police officers deplore the "unfortunate situation" existing in California at present, under the *Cahan* decision ruling which excludes illegally seized evidence in criminal cases. They say with relief in their voice, "We don't have to get a warrant here." When they are reminded that under the Nevada Constitution the reasonable search and seizure clause requires a warrant, they point out that although this may be true, their law of evidence which permits illegally seized evidence to be used in court makes a warrant unnecessary in practice. In some cases, they admit, a warrant is obtained, but they add that usually the information they employ to support the application for it has been obtained by an entry without a warrant.

Probably the most sensational case of private eavesdropping in recent years was the bugging of public officials done under the sponsorship of the *Las Vegas Sun*, a crusading newspaper.¹⁴ It was this bugging that led to the 1957 legislation prohibiting private bugging and tapping and permitting law-enforcement tapping only under court order.¹⁵

The publisher-editor of the *Las Vegas Sun* had accused an

official of taking graft money from the madam of a whorehouse. The official sued the publisher for a million dollars, and the publisher found himself in the position of being unable to back up his charges, because his principal informant had decided to keep silent. Faced with this situation, the publisher hired a New York private undercover man, who had a fabulous reputation as an investigator for law-enforcement agencies and private individuals. This undercover agent came to Las Vegas, set himself up as an Eastern racketeer, and immediately began negotiations to purchase a whorehouse and an interest in a casino. He gave lavish parties and handed out expensive gifts. He sought in return information concerning whom he would have to pay off to run his activities in Las Vegas safely.

All his meetings with public officers and police were conducted in the parlor of a hotel suite on the famous Las Vegas strip. A microphone had been concealed in the parlor, and all negotiations were recorded on magnetic tape. His masquerade finally resulted in obtaining incriminating evidence against a number of public officials. The *Las Vegas Sun* carried under bold headlines the exposé of this investigation and described the manner in which the room had been bugged.

General consternation swept the gambling casinos and public officialdom. As a result, a bill was rushed through the legislature to prohibit all private bugging and wiretapping. The bill permitted law-enforcement wiretapping in certain specific types of crimes, but only under a court order. Law-enforcement officers in Las Vegas today admit that the crimes selected for permissive wiretapping, which are murder, kidnapping, treason, sabotage, or a crime endangering the national defense, would not include the areas in which almost all their present-day wiretapping is done. However, they anticipate no trouble, since they see little diffi-

culty in naming one of the enumerated crimes in their application for a wiretap order, and then going ahead and tapping for any crime in which they are interested.

There are only a few private detectives in the Las Vegas area, and only one of these has the reputation of owning equipment and being available for electronic eavesdropping. This private detective has been in business for about forty years. He claims to have been tapping and bugging since the 1930's.¹⁶ His equipment includes automatic recorders, pocket recorders, transmitters, and general wiretapping equipment. He has been called on from time to time to aid law-enforcement agencies in Los Angeles and Las Vegas and has often loaned wiretapping equipment to the police.

This private detective claims to have twenty to twenty-five wiretaps going a year, principally in domestic relations cases and industrial cases. He says he once put a microphone in the meeting place of a CIO convention in the early years of the CIO to pick up information for the Los Angeles police on whether or not Communist influence existed in the organization. He was also called in by the Los Angeles police to aid in the investigation of *Confidential* magazine.

He received cooperation from contacts in the Southern Nevada Telephone Company at a time when this was not considered illegal. He claims that he has installed many wiretaps in open daylight. On such occasions, dressed as a workman, he has climbed telephone poles and has not been bothered. Once, he says, he even carried on a conversation with a telephone company supervisor while he was working on a pole.

He recalls how his use of a microphone obtained a verdict for his client. The lawyer on the other side of the case arranged a meeting with him and proposed that he work for

them instead of for his client. The lawyer indicated that he wanted him to falsify evidence. The recorded conversation was played to the judge in chambers, and a directed verdict was obtained.

There are a number of technicians and electricians who are available to install microphones for a paying customer. Concealed microphones are used extensively in the Las Vegas area. Las Vegas providing fun for many wealthy and prominent visitors, frequent efforts are made to record embarrassing conversations.¹⁷

One high-ranking law-enforcement officer installed a microphone in every room in a popular whorehouse. Conversations of visiting dignitaries were recorded and kept for future sale. Some blackmailers employ pretty girls to make dates with wealthy visitors and to escort them to rooms which have previously been bugged.¹⁸

There is a gambling casino which employs closed-circuit television to observe the actions of its employees.¹⁹ A number of casinos have used concealed microphones in the employees' dressing rooms and in the men's and ladies' rooms. In one large casino, the owners noticed that they were losing money at the bar and employed a private detective to bug the men's changing room for employees. This procedure was successful in locating the employee who was "knocking down" at the cash register.²⁰

Apparently, no effort is made to comply with the Federal Communications Commission regulation requiring the playing of a beep tone over the telephone whenever a telephone conversation is recorded without the consent of one of the parties. Private distributors of recording machines have been selling a substantial number of attachments specifically designed to permit the recording of telephone conversations. Federal regulations require that the telephone company be notified of each sale of such a device, but rec-

ords of the Southern Nevada Telephone Company show that the company has never been so notified by a recording machine salesman, and in the entire history of the telephone company of Nevada, there has never been a request by a subscriber to have a beep tone put on a telephone that was going to be used for recording a telephone conversation.²¹ However, it is well known that telephone calls are constantly being recorded in Las Vegas. The sounding of a beep tone during a telephone conversation when a recording is being made is not a responsibility of the telephone company, but is required of the party making the recording.

5

WIRETAPPING IN ENGLAND¹

In the early summer of 1957, London newspapers carried a story which aroused widespread interest and concern among the British and led to heated debates in Parliament. It had been publicly disclosed for the first time in England that English law-enforcement agencies used wiretapping as an investigative tool.

The case which led to the disclosure was itself sensational and sharply focused the controversy. In the latter part of November, 1956, the Assistant Commissioner of Police in charge of the Criminal Investigation Department was authorized by the Home Secretary to show the chairman of the Bar Council transcripts of intercepted telephone conversations obtained by means of a wiretap which had been placed on the phone of a racketeer. These conversations apparently connected a certain barrister with the criminal activities of the racketeer.

The chairman of the Bar Council sought and obtained permission from the Home Secretary to show the transcripts of the intercepted telephone conversations to members of the Bar Council who were inquiring into the conduct of the barrister. The barrister himself was also shown copies of the transcripts.

Either through the barrister or some other source, the

existence of the wiretap transcripts was reported to Parliament and widely discussed in the newspapers.

It is apparent from the debates that took place in Parliament that the British people, including the members of Parliament, had been totally unaware that wiretapping was used by law-enforcement agencies in England. It was learned that wiretapping was done under the authority of the Home Secretary. Members of Parliament called upon the Home Secretary to explain by what right he issued warrants authorizing this procedure. The Home Secretary replied that his right was based on the prerogative of the Crown.

In June, 1957, a Committee of three Privy Councillors was appointed to study the practice of interception of communication under authority of the Home Secretary. The members of the committee were Norman Birkett, Monckton of Brechley, and P. C. Gordon Walker.

The committee submitted its report and recommendations on September 18, 1957. The investigation was done in record time and consisted primarily of receiving evidence from the responsible heads of law-enforcement and security agencies. Apparently these officials confided completely in the members of the committee, and their statements were accepted by the committee on face value. We cannot resist interjecting that legislative committees in America have been much less fortunate.

As for the release of the wiretap transcripts to the Bar Council in the barrister's case, the Committee of Privy Councillors frowned on this and said it had been a mistake. However, they said there had been no precedents for such action in the past, and they had been assured that it would not occur again. The closest parallel situation they could find involved a disciplinary inquiry before the Metropolitan Police Discipline Board in 1953. Two police officers had been charged with corruption, and it was revealed

that the Secretary of State had issued a warrant authorizing the interception of telephone conversations between the two officers. Transcripts of these conversations were permitted to be used in the disciplinary proceedings.

Disapproving the release of intercepted communications to the Bar Council, the Committee of Privy Councillors recommended that information obtained on public grounds by the exercise of the wiretap power should not be disclosed to private individuals or private bodies or domestic tribunals of any kind whatsoever. However, the committee concluded that the Secretary of State did have the power to authorize wiretapping, and found that the power to intercept communications existed in England from very early times.

A proclamation of May 25, 1663, permitted the opening of letters on the warrant of the principal Secretary of State. In 1844, England was aroused over a controversy similar to the one in the summer of 1957. The Secretary of State had issued a warrant to open the letters of Giuseppe Mazzini. Debates broke out in both houses of Parliament, and two secret committees were set up, one of the House of Commons and one of the House of Lords, to inquire into the matter. These committees reported that the power to open letters appeared to have been exercised from the earliest period, going back to the first establishment of a regular post office in the seventeenth century. Statutes in 1710, 1837, 1908, and 1953 specifically provided for the intercepting and opening of letters by postal authorities.

The Committee of Privy Councillors also found that the power to intercept telephone messages had been exercised in England from time to time since the introduction of the telephone. Until 1937 the Post Office had acted on the assumption that intercepting telephone conversations did not require authorization by the Secretary of State, and accord-

ingly arrangements for intercepting telephone conversations were made directly between the Security Service and the police authorities and the Director General of the Post Office. In 1937, after review by the Home Secretary, it was decided that the same practice should be followed with wiretapping as was followed with intercepting letters and telegraphs. Thereafter, wiretapping by law-enforcement agencies was done only on the authority of a warrant issued by the Secretary of State. The committee also found authority for interception of telephone communications in the Telegraph Act of 1868.

The committee reported that it was satisfied that the Secretaries of State and all the officials and authorities concerned have taken and continued to take scrupulous care to assure strict adherence to the purposes to which it was intended by the Home Office that the interception of communications should be directed and confined. The various agencies employing interception of communications reported that they make periodic reviews of outstanding warrants in an effort to restrict the activity and to make cancellations. Procedures were constantly revised through communications between the Home Office and the Metropolitan Police concerning the criteria for the issuing of a warrant to intercept a communication. Most recently, three conditions were laid down both for the police and for the Board of Customs and Excise:

The offense must be really serious.

Normal methods of investigation must have been tried and failed; or must, by the nature of things, be unlikely to succeed if tried.

There must be good reason to think that interception would result in conviction.

The committee did recommend that a system be set up to preserve records of warrants for the interception of com-

munications, so that a review could be made periodically of the manner in which this activity was being conducted. The committee rejected proposals that the power to issue warrants be taken from the Secretaries of State and given to magistrates or a High Court Judge. The Privy Councillors thought that giving the power to a number of magistrates or judges would weaken the control and make it easier for law-enforcement agencies to obtain warrants. Further, the committee thought it would make the task of keeping records even more difficult.

Interception of communications was employed by three agencies: the Metropolitan Police, the Board of Customs and Excise, and the Security Service. The Metropolitan Police reported that they used interception of communications to break up organized and dangerous gangs, to catch escaped convicts and fugitives wanted for serious crimes, and to detect receivers of stolen property. The overwhelming majority of warrants issued for police purposes were applied for by and granted to the Metropolitan Police. The committee explained that this was so because London was a natural center for criminal, as well as other, activities. The committee illustrated:

Much of the major crime in the provinces even in large cities, is the work of criminals based on London. The leader of a gang cannot put his schemes into effect without directly or indirectly communicating with his henchmen, almost always by telephone. A receiver who works on a large scale is often either the organizer or focal point of a number of criminals who are dependent upon him for a market. A man on the run has often revealed his whereabouts by telephone to his home or his associates.²

The Board of Customs and Excise reported that interception was principally used to obtain evidence of smuggling, especially of diamonds and Swiss watches.

The Security Service reported that interception of communications was used as a weapon against espionage and subversion, and "to insure that no one who is known to be a member of the Communist party or to be associated with it in such a way as to raise legitimate doubts about his or her reliability is employed in connection with work, the nature of which is vital to the security of the state. The same rule will govern the employment of those who are known to be closely associated with Fascist organizations."

The Privy Councillors reported that they found that interception of communications had proved an effective weapon for the agencies using it. As examples of the accomplishments of this investigative technique, they listed: the arrest and conviction of a number of close associates of a notorious criminal; the recapture of a number of escaped convicts; the arrest and conviction of a large-scale smuggler, believed to have illicitly exported six million pounds over a period of three years; and, the identification of major spies and the discovery of highly secret material in passage through the post in extremely ingenious forms, and the detection of Communists operating secretly in the civil service.

Like law-enforcement officers in America, the British agencies engaged in interception of communications protested that if this weapon were taken away from them, they would be in serious trouble. The Privy Councillors reported that the authorities "are properly convinced that the effect of their operations would be greatly, if not calamitously reduced, if they were to be deprived of the power to intercept communications."

The committee pointed out that in 57 per cent of the cases between 1953 and 1956 where the Metropolitan Police intercepted communication, arrests of "important and dangerous criminals" resulted. In 1957, the committee re-

ported, every interception but one had led to an arrest. The Board of Customs reported an 80 per cent detection of major fraud through the use of interception of communications.

However, in the separate report of Mr. P. C. Gordon Walker, under the heading, "Reservation by Mr. P. C. Walker," Mr. Gordon Walker emphasized that arrests and detections through the interception of communications only accounted for a tiny portion of the total activity of the agencies using this method. For example, he reported that the number of detections of offenders secured through interception by the Board of Customs was .7 per cent of the total number of convictions for offenses against customs regulations, and that the number of arrests made by Metropolitan Police as a result of interceptions was .13 per cent of the total number of arrests for indictable offenses.

The committee recognized that this was true, but explained that the great bulk of arrests and detections related to minor offenses and that interception of communications was used by authorities in very few instances and only in the case of major crime. The committee stressed that on the whole, the most important captures and seizures are made as a result of interceptions of communications.

The committee concluded its review of law-enforcement interception of communication as follows:

As a result of our review of the use and result of the power to intercept communications, we are satisfied that all the officers concerned are scrupulous and conscientious in the use and exercise of the power to intercept communications. We are satisfied that the interception is highly selective and that it is used only where there is good reason to believe that a serious offense or security interest is involved. We are satisfied that the number of people with access to the material

obtained by interception, either in its original or selected form, is kept to an absolute minimum. We are further satisfied that interception of communications has proved very effective in the detection of major crimes, customs frauds on a large scale and serious dangers to the security of the state.³

It is obvious from the report of the Privy Councillors that law-enforcement agencies conduct their wiretapping at wiretapping centers. Unlike their American counterparts, they do not scramble up telephone poles and hide in alleys with tape recorders. In order to operate wiretap centers, they must receive complete cooperation from the Post Office authorities, permitting them to have direct lines from the central telephone offices.

The committee reported that British wiretapping was a purely mechanical operation, and only a very small number of persons supervised it. Those officials supervising the actual recording of the telephone conversation listened in only occasionally and briefly to check whether the machines were in order. The committee explained that it was at the point when the recording was passed on to those authorities concerned with the use of the interception, that the whole content of the intercepted conversation became known to the officials, whether or not it was relevant to the inquiry at hand, whether or not it contained private, personal, or even privileged conversation.

They reported that the number of officials having access to this total information was very small, in no case in excess of three or four carefully chosen officers. These officers extracted from the recordings only the information relative to the inquiry and passed on the extracted information to other officials, concerned with the criminal investigation. The material not selected and transcribed was destroyed.

The Privy Councillors reported the following statistics on

NUMBER OF INTERCEPTIONS AUTHORIZED BY THE
SECRETARY OF STATE

Year	Police, customs, post office, and security		Drugs, lotteries, and obscene publications		Totals	
	Telephones	Letters	Telephones	Letters	Telephones	Letters
1937	17	335	..	221	17	556
1938	20	422	..	288	20	710
1939	20	643	..	330	29	973
1940	125	1,192	..	365	125	1,557
1941	180	833	..	29	180	862
1942	164	512	..	2	164	514
1943	126	327	..	2	126	329
1944	102	213	..	...	102	213
1945	56	90	..	...	56	90
1946	73	139	..	...	73	139
1947	110	162	..	28	110	190
1948	103	156	..	714	103	870
1949	133	183	..	458	133	641
1950	179	232	..	124	179	356
1951	177	261	..	225	177	486
1952	173	237	..	225	173	462
1953	202	240	..	219	202	459
1954	222	223	..	4	222	227
1955	231	205	10	...	241	205
1956	159	183	..	...	159	183

INTERCEPTIONS IN SCOTLAND, 1946 TO 1956

	Year	Number	Applicant
Letters			
	1947	22	
	1948	9	Scottish Home Department
	1949	3	
	1950	4	
	1951	6	
	1952	7	
Telegrams	1952	1	Crown Office
Telephones			
	1946	1	Police
	1949	1	Customs and Excise
	1955	1	

the use of interception of communications over a twenty-year period by law-enforcement authorities in England and Scotland.⁴

The Privy Councillors had little to say about unauthorized wiretapping. This subject was disposed of in three short paragraphs, as follows:

All the evidence we heard was to the effect that there is, and has been, no tapping of telephones by unauthorised persons in this country.

We also received evidence that, for technical reasons, the unauthorised tapping of telephones would be much more difficult in this country than in the United States of America. However, there can be no certainty that unauthorised tapping of telephones does not occur and it might even be done without the commission of a trespass upon private or Crown property.

In these circumstances Parliament may wish to consider whether legislation should be passed to render the unauthorised tapping of a telephone line an offence.⁵

All law-enforcement agencies using interception of communications emphasized that they never used material they obtained by this means as evidence, but that they employed interception of communications only as an investigative aid. The authorities explained that to use the information so obtained in court would make the practice widely known and thus destroy its efficacy in some degree.

The committee took a strong law-enforcement position on two subjects which form the very core of the debates going on in America: wiretapping as a police weapon, and wiretapping as an invasion of privacy. The committee commented as follows on the value of wiretapping as a law-enforcement weapon:

We feel that to announce the abandonment of this power now would be a concession to those who are desirous of break-

ing the law in one form or another, with no advantage to the ordinary citizen or to the community in general. If the Police were to be deprived of the power to tap telephone wires in cases of serious crime, the criminal class would be given the use of the elaborate system set up by the State and use it to conspire and plot for criminal purposes to the great injury of the law-abiding citizen. The telephone could then be used with impunity to arrange the last-minute details, for example, of a mail van robbery, a theft on an organised scale, an assault with robbery on a citizen, or indeed any form of crime. In the large centres of population like London it would be an immensely powerful aid to criminal conspiracies of every kind if it were made known that the power to intercept telephone communications had been prohibited, and it would permit the telephone system to be used without hindrance by the criminal classes and aid them in their criminal enterprises without any advantage either to the individual or to the State. Thus, in the view we take, if the power of intercepting telephone conversations were to be taken away from the Police, the law-abiding citizen would get nothing in return, and might indeed suffer the greatest loss.⁶

This is what the committee had to say on wiretapping as an invasion of privacy:

Two objections can be dealt with shortly. If it should be said that at least the citizen would have the assurance that his own telephone would not be tapped, this would be of little comfort to him, because if the powers of the Police are allowed to be exercised in the future, as they have been in the past under the safeguards we have set out, the telephone of the ordinary law-abiding citizen would be quite immune, as it always has been. Secondly, if it is said that when the telephone wires of a suspected criminal are tapped all messages to him, innocent or otherwise, are necessarily intercepted too, it should be remembered that this is really no hardship at all to the innocent citizen. The information so obtained

goes *only* to the Police and, until the recent case . . . , had never been disclosed to any outside person and had always been destroyed. This cannot properly be described as an interference with liberty; it is an inevitable consequence of tapping the telephone of the criminal; but it has no harmful results, and the testimony of the Secretaries of State who have given evidence before us confirms this view. The citizen must endure this inevitable consequence in order that the main purpose of detecting and preventing crime should be achieved. We cannot think, in any event, that the fact that innocent messages may be intercepted is any ground for depriving the Police of a very powerful weapon in their fight against crime and criminals. No single ground of complaint under this head has been made known to us, and we feel the question we are asked to answer should be answered in the light of practical reality, rather than in imagined or fanciful circumstances. To abandon the power now would be a concession to those who are desirous of breaking the law in one form or another, without any advantage to the community whatever. (*Italics supplied*)⁷

Mr. Gordon Walker added his reservations to the committee's report. He expressed agreement with the committee on permitting the security services to continue their interception of communications in accordance with the present procedures. However, he believed that wiretapping for the detection of crime should be almost totally eliminated. Giving examples of the only kinds of cases where he would permit wiretapping in a criminal investigation, he stated, "The sort of rare and exceptional case I have in mind is that of a dangerous criminal or lunatic at large who is likely to commit violence or murder, and the interception of communications may provide the best or only means of a speedy recapture; or that a highly organized or dangerous gang is committing violence and cannot be broken up by other means of detection."

He stated further that interception of communications must be restricted, because it does not have public confidence or support. He stressed that methods used by police must have public support, or there may be some danger of a weakening of the general popular approval without which the police cannot in the long run carry on effectively. Mr. Gordon Walker summarized:

There would, of course, be a price to pay if my recommendation were adopted. It would bring comfort to some criminals and smugglers. The price can, however, be exaggerated. It is true, as we make clear in paragraph 112 of our Report, that methods of interception are used only in a small number of serious cases. Nevertheless the proportion that the number of arrests or convictions obtained by interception bears to the total of arrests or convictions seems to me significant. I have taken out figures for certain recent years. The number of detections of offenders secured through interception by the Customs was 0.7 per cent. of the total number of convictions for offences against customs regulations. The number of arrests made by the Metropolitan Police as the result of interceptions was 0.13 per cent. of the total number of arrests for indictable offences. These figures seem to me to suggest that even if the interception of communications for the detection of crime were practically brought to an end, there would be no catastrophic increase in the amount of crime that might in consequence escape detection. Moreover, it is scarcely to be doubted that most of the offenders would be caught, if not so promptly, by normal means of detection. It must also be taken into account that the danger would be reduced that the public repugnance to telephone tapping may weaken popular support and approval of the methods used by the Police.^a

Since authority for wiretapping by English law-enforcement officers rests upon the early-established right in England of the Post Office to open the mails, it is interesting

to see whether there is in America any parallel right of law-enforcement officers to intercept communications sent through the mails. The statute that appears most pertinent is the Act of June 25, 1948, ch. 645, 62 Stat. 782, 18 U.S.C.A. 1717(c), which reads as follows:

(c) No person other than a duly authorized employee of the dead letter office or other person upon a search warrant authorized by law shall open any letter not addressed to himself.

At first blush this provision seems to authorize the opening of a letter on the strength of a search warrant. But a careful reading of the provision makes it clear that this can be done only if there is a search warrant *authorized by law*. Thus, we must look for other statutes specifically authorizing search warrants which relate to letters or matters contained in letters.

There is one statute which permits the Postmaster General to authorize searches for mailable matter transported in violation of law by issuing a letter of authorization under his hand (39 U.S.C.A. 700).⁹ Another statute, 39 U.S.C.A. 498,¹⁰ permits any post office inspector, collector, or other customs officer or United States marshal or his deputies to seize all letters and bags, packets and parcels, containing letters which are being carried contrary to law on board any vessel or in any boat or in any post route. It is to be noted that both these provisions relate to letters or packets carried or mailed in violation of law.

There are a number of other statutes which specifically authorize the issuance of search warrants for narcotics and other items generally the subject of search warrants. Thus, it is apparent, that if narcotics or counterfeit money are enclosed in an envelope or packet and placed in the mails,

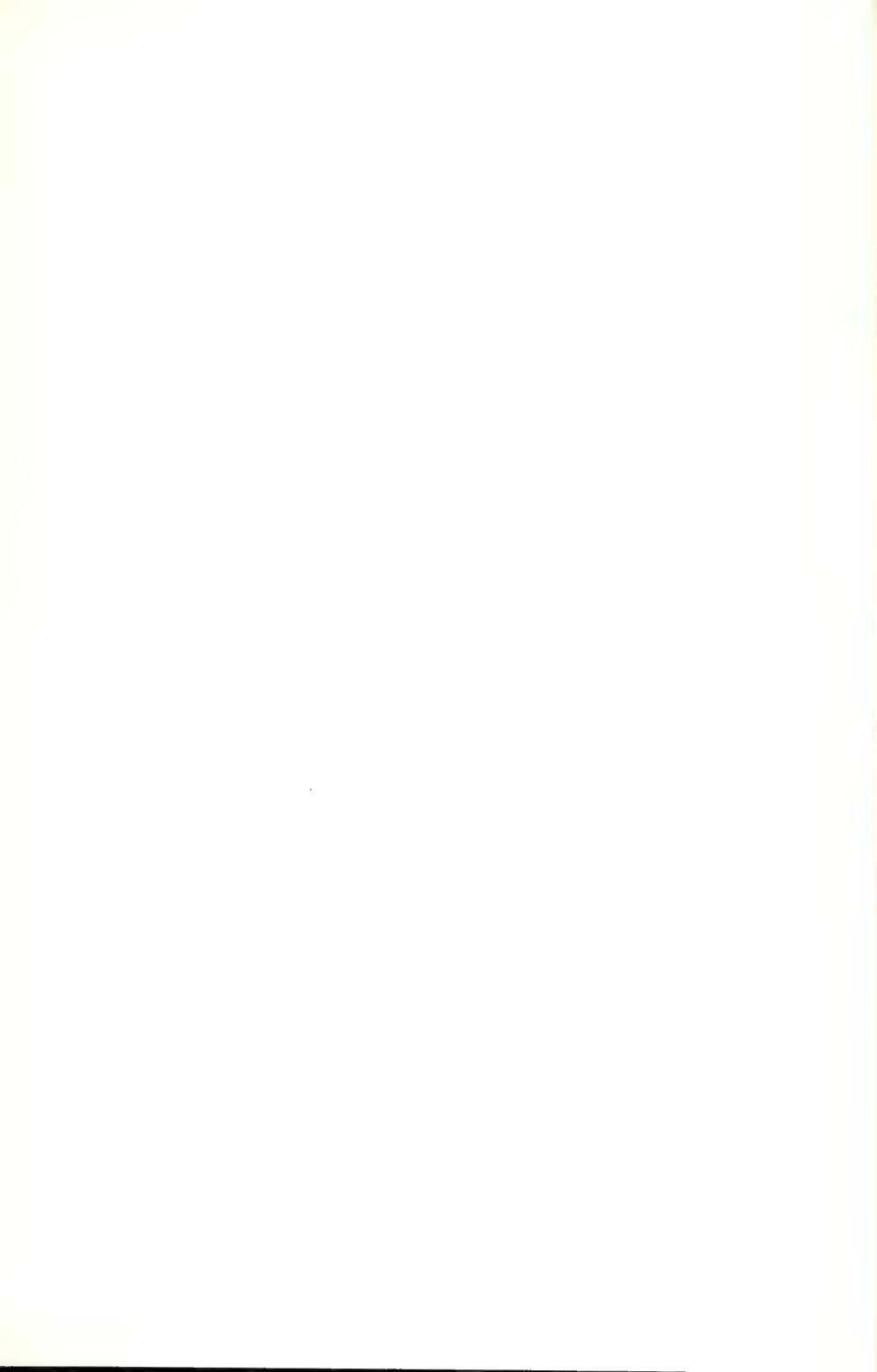
a search warrant could be obtained to seize and open this package.

However, no statute has been found which authorizes the opening of a letter purely for the purpose of revealing the communication within the letter, no matter how incriminating that communication may be. It is doubtful whether such a statute would be constitutional in light of the landmark decision of the Supreme Court of the United States in *Boyd v. United States*, 116 U.S. 616 (1886). There the Supreme Court held that there is no authority for the issuance of a warrant to search a person's private papers for evidence in criminal proceedings. Such a search, the Court held, would be in violation of both the fourth and fifth amendments of the United States Constitution. The Court said that the search and seizure of a man's private papers to be used in evidence for the purpose of convicting him of a crime is totally different from the search and seizure of stolen goods, dutiable articles on which the duties have not been paid, and the like, which rightfully belong in the custody of the law.

It seems clear, then, that no search warrant can be authorized by law for the purpose of intercepting a communication sent through the mails. In this respect, the United States and England have traveled on different paths. An interesting factor that adds a little humor to the situation is that the Supreme Court of the United States in the *Boyd* case, in holding that a search cannot be made of a man's papers to obtain evidence, relied almost wholly on the famous English decision of 1765, in *Entick v. Carrington and Three Other King's Messengers*, 19 How. St. Tr. 1029.

The government of New Zealand apparently does not approve of the practice of wiretapping in England. In June, 1957, the Postmaster of New Zealand told the House of Representatives, "I should like to assure members that there

is no telephone tapping in this country with one exception, and that is on the authority of the Prime Minister where the national security may be involved. In those circumstances and those circumstances only, will telephone tapping be tolerated. For the purpose of ordinary criminal administration there will be no telephone tapping."



Part Two



EAVESDROPPING: THE TOOLS



INTRODUCTION

Although there is a tendency to regard electrical and electronic eavesdropping as a kind of black magic, the devices employed, no matter how dramatically described by private detectives to lawyers and the public, use no principles unknown to communications and electronic engineers.

In most cases of eavesdropping the objective is to listen to and/or watch the victim unknown to him and to make a record of what is seen or heard. In some instances the record merely serves to substantiate what is seen or heard by an observer. In others the record alone is sufficient for the purposes at hand. There may be situations where a poor quality, but easily obtained record will suffice. At other times a high-fidelity sound recording or a photograph is appropriate. It is necessary then to appraise each case individually, so as to obtain the needed results with the time, effort, and money that can be spent.

Among the methods and contrivances to be discussed here are telephone tapping, hidden microphones, recording of speech, and a number of special devices, such as electrically triggered photographic cameras, television cameras, and electronic automobile-trailing devices.

This chapter will attempt to tell in lay language how each device works, what its limitations are, and what protection against it exists, if any. As in warfare, development of security against electrical eavesdropping is accompanied by the evolution of new and improved techniques to overcome and circumvent the defense. That is not to say that eavesdroppers and their victims consciously and continu-

ously play a game with one another. As electrical eavesdropping developed, those "spied upon" found ways to thwart the listeners or watchers. As eavesdropping extended into the realms of labor, "business intelligence," and politics, better devices and techniques were demanded which would give good results with less chance of detection. Private detectives and the electronic technicians they employed often worked both sides of the street, helping a client one day to search for and find devices similar to those "planted" on another day to survey someone else. All this serves to establish that it will be impossible to give statements of absolute fact regarding limitations of and defense against these instruments.

Some kinds of equipment used for "snooping" can be bought on the open market; some are supposedly available only to law-enforcement agencies; and many are made up by the technicians employed by investigators from components readily obtainable for radio and electrical work.

It is not to be supposed that only the latest techniques and devices are used. In the great majority of cases the expense, time, and effort are not warranted. It is only when the victim expects surveillance, due to previous bitter experience or an over-sensitive conscience, that the more highly refined techniques are employed.

TELEPHONE TAPPING

The Telephone System

The simplest telephone system consists of a microphone, a battery or source of power, and an earphone, as shown in Figure 1.

The usual telephone microphone is of a type known as the "carbon microphone," shown in cross section in the

sketch in Figure 2. In this, a sound-actuated diaphragm acts on fine carbon particles to press them into a more or less intimate contact with each other according to the sound. Carbon is one of a number of materials that exhibit high

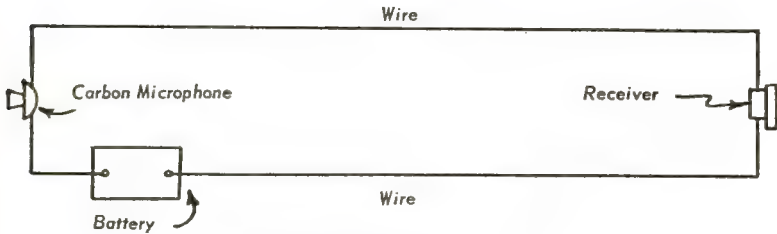


Fig. 1. Simple Telephone System

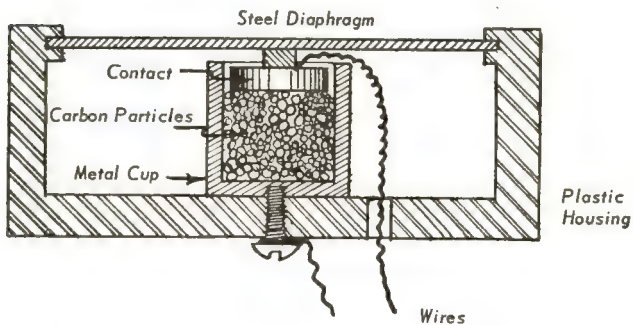


Fig. 2. Functional Cross Section of Carbon Microphone

electrical resistance if lightly contacted and much lower resistance if firmly contacted. Hence the moving diaphragm causes the resistance of the carbon aggregate to vary in accordance with the impinging sound. If a current is flowing in the circuit, the varying resistance of the microphone will cause it to fluctuate in accordance with the diaphragm vibrations.

The receiver, sketched in Figure 3, normally contains a steel diaphragm, in close proximity to an electromagnet. As the current grows, the diaphragm is more strongly attracted, and as the current weakens, the diaphragm tends to spring back into its unstressed condition. The result is a vibration corresponding to the original sound. The direct current in the receiver can be (and is in practice) avoided by using a permanent magnet supplemented by an electromagnet.

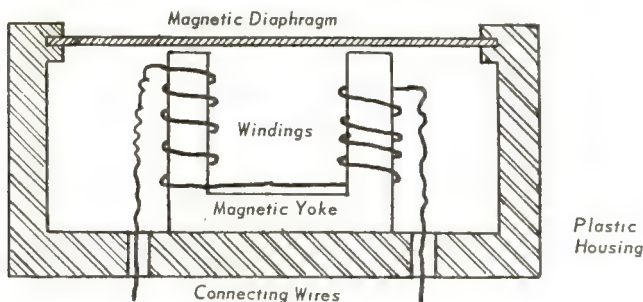


Fig. 3. Functional Cross Section of Receiver

The actual telephone system is not quite so simple as what has been described, but the additional complexity represents nothing fundamentally different from the simple case, and arises from the fact that two-way conversation is desired. Provision must be made for ringing and dialing—all with only two wires!

Figure 4 shows the connections of a typical common-battery dial telephone (*i.e.*, where the battery is located at the central office). All the elements shown are located in the instrument which includes the cradle and the hand set. It is not necessary to explain in detail how the set functions, but there are several important points which will arise later in the discussion of the vulnerability of the telephone to tapping. One of these is that there are a number of dif-

ferent and distinct currents which can flow in the system, each having its own particular function. The dialing pro-

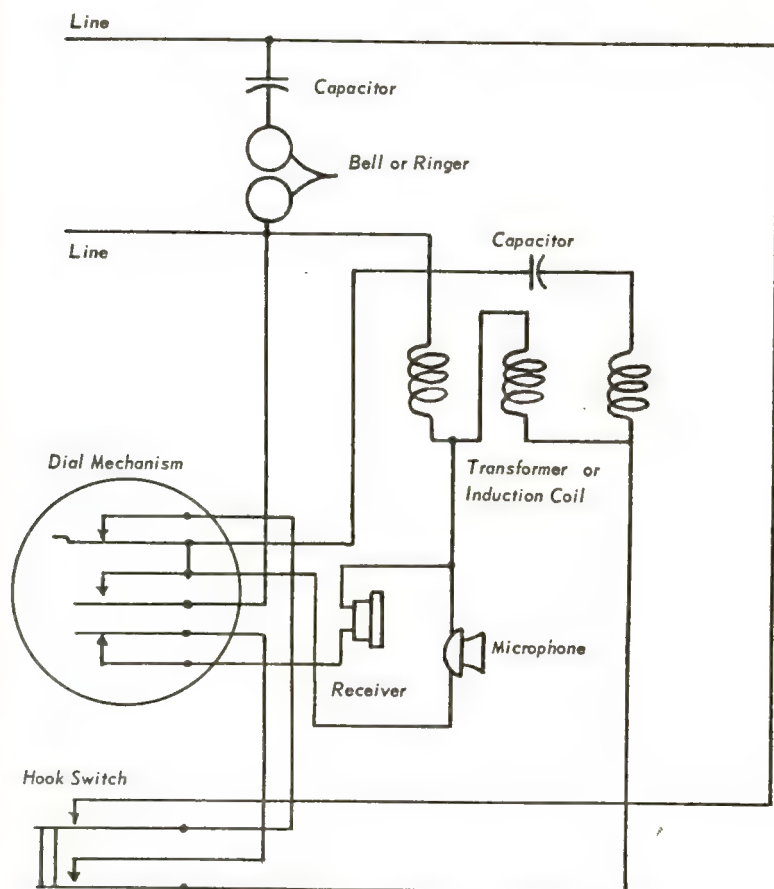


Fig. 4. Schematic Wiring Diagram of a Common Telephone Set

cedure results in sudden impulses of current which actuate automatic selector switches in the central office. Ringing is accomplished when a central office generator is turned on which produces a very low-frequency signal (around 16 cy-

cles per second) of the order of 150 volts amplitude. During operation direct current, that is unvarying current, flows through the microphone, which is a carbon microphone very similar to that described above. Finally, the current fluctuations corresponding to a voice message pass through the receiver. The important point in all this is that each of these currents passes only through the element for which it is intended. The inclusion of capacitors, the induction coil, and the various contacts insures this situation. The wiretapper may utilize all these different currents in plying his trade, and, on the contrary, the telephone company utilizes some of the properties causing this current separation in checking the system for normal operation. Aside from separating the various functions taking place in the telephone for purposes of better performance, there is also the underlying objective of keeping the central office battery drain low. This, too, will enter further into the present discussion of tapping.

Figure 5 is a functional diagram of the telephone system between the subscriber and the central office. The pair of wires leaving a residence is called a "drop loop." Up on the nearest telephone pole it is bundled together with similar wires from other residences, and together they travel to the nearest terminal box.

The terminal box has in it two rows of pairs of terminals. To the various pairs of terminals in one row, subscriber wire pairs are connected. The paired terminals in the other row are connected to wire pairs that travel back to the central office. With each of these, a telephone number is associated. In the box, each subscriber pair of terminals is connected by jumper wires to a cable pair. There are more cable terminals available in every box than there are subscribers to be serviced at that location. This is because the same cable pairs are made available at three or

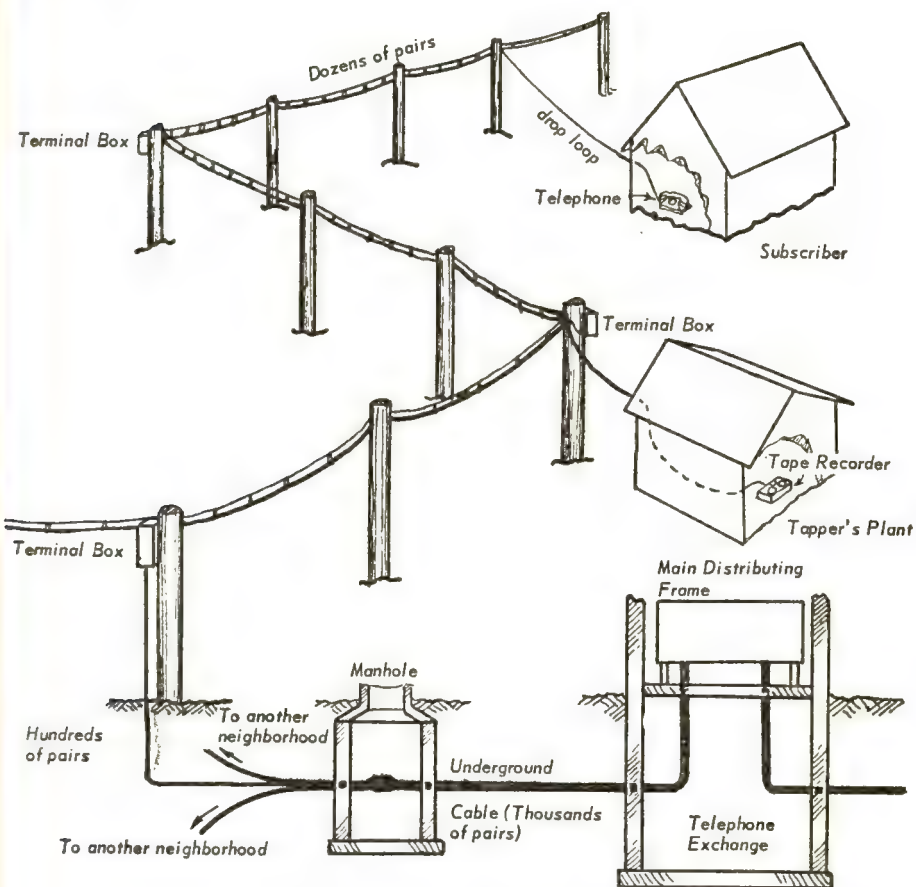
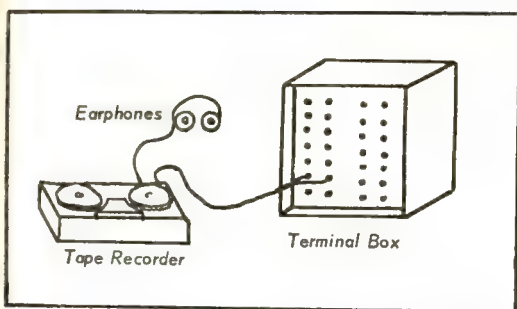


Fig. 5. Functional Diagram of the Telephone System with a Tap

Based on a figure by I. J. Starworth in *The Reporter*, December 23, 1952, p. 14.

four different boxes to ensure flexibility. For example, if one wished to move a block away and still keep the same telephone number, he could do so if that particular pair were also available at the new location. Usually three or four boxes will serve a two- or three-block radius.

This passage of the telephone wires from the instrument to the terminal box is modified slightly in the business district. Here the system is completely underground and the terminal box may be in the basement of a large building. Indeed, the terminal box may take one of several forms: a wooden box located on a short pole, an elongated, flat metal box suspended by the aerial cable, or a large, metal-housed box in the basement of a commercial building.

No matter whether the system starts out on telephone poles or immediately goes underground, it is subterranean from the terminal box back to the main office.

Except for the open wire close to the subscriber, the wiring of the telephone system is carried in sealed cables, lead-sheathed in the older installations, polyethylene-encased in the newer ones. As the underground cable from a neighborhood, containing perhaps hundreds of wires, travels toward the central office, it is joined from place to place by other cables from other neighborhoods, so that the cable eventually entering the telephone exchange may contain 1800 to 2100 pairs of wires.

The system has been described here in some detail in order clearly to establish the points where vulnerability to tapping exists.

Direct Tapping

In the case of the simple telephone system of Figure 1, all that is needed for tapping is to connect an additional earpiece to the two wires of the circuit anywhere between transmitter and receiver, as is shown in Figure 6. This is

called shunt tapping. If the additional receiver is identical to the one already present, the tapping may be noticed by the victim through a change in volume level due to the additional "loading" of the circuit. That is to say, the additional receiver drains current from the system, so that less energy is available for driving the desired receiver. To over-



Fig. 6. Shunt Tapping the Simple Telephone System

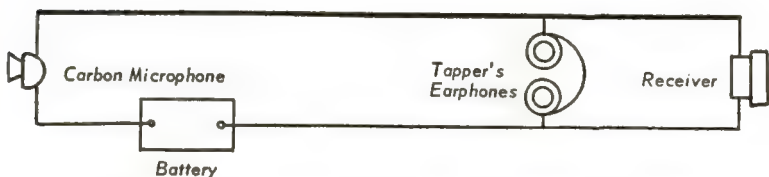


Fig. 7. Series Tapping the Simple Telephone System

come this, a high-impedance receiver would have to be used, that is, one drawing very little current.

An alternative way of tapping the simple circuit is to use the connection of Figure 7. This is series tapping. In this arrangement the added telephone will impede the flow of current to the subscriber's set. Hence a low-impedance set should be employed. Of the methods used by wiretappers, the shunt connection is much more convenient.

Basically, tapping the more complex telephone connection shown in Figure 4 may be accomplished in nearly as simple a way as in the elementary case just discussed. An

auxiliary connection may be made across the two lines or in series with one of them anywhere between the caller and the party called.

From what has been said about the overall system, it can be seen that any time a cable duplication occurs for flexibility it introduces a weakness into the system from the standpoint of security against tapping. It means that connections to a given pair used by a subscriber are available at perhaps four junction boxes located at various points in a small area. The tapper who knows where the desired line is accessible can be blocks away from his victim. This indicates why shunt tapping is preferred, for the series tap is very restricted as to where it can be applied.

Tapping a line is a matter of finding the correct set of terminals at a place sufficiently far removed from the subscriber so that his suspicion is not aroused, and installing a new drop loop to a place selected for listening. (See Figure 5.) The tapper may rent a room or an office where he may listen to or record everything that is said on the line being tapped. The actual terminal connections are made with several precautions to avoid detection. These will be discussed later.

In practice, the tapper may use one of several techniques. The first is to spot where his victim's drop loop joins its neighbors and to trace it back to the nearest terminal box. He may choose to do his tapping at this box or at one of the others within the radius of several blocks. Of course, if he has access to telephone company records, all this information is available to him without tracing. The identification of the correct terminals inside the box is likewise a matter made easier by having access to the records, but even without such information, the wiretapper is not stymied. One private detective has reported using a line selector for finding his victim's terminals among many others

in a terminal box. This device is described as having 36 neon bulbs, although the number is not important. Each neon bulb is connected across one of the terminal pairs in question; then to one pair not so connected is joined a lineman's dial handset. The tapper dials his victim's number, and this causes the central office ringing generator to be connected to the desired line. If one of the neon bulbs is connected to this line, the ringing voltage of about 150 volts will cause it to light. If none of the bulbs lights, the tapper must investigate still other possible terminals. Obviously the same trick could be performed with only one neon bulb or even with two moistened fingers, relying in this case on the tingle as an indicator, but the use of many bulbs speeds up the process and is less likely to create suspicion by repeated ringing of the victim's bell.

So far as the telephone company's records are concerned, they are as secure as normal practice demands. It is impossible, of course, to generalize to any great extent on telephone company operations, because although most of the telephone companies are part of the American Telephone and Telegraph system, in their local operations they are autonomous. In one of the local companies, the terminal information is available from the maintenance records which are filed by call number and which contain the name and address of the subscriber and the pair number assigned to him. In this particular office, perhaps thirty-five people altogether, twenty-five of them girl repair clerks, have access to these records. The building is open to employees only and has door guards to enforce this security. In another office are the assignment records; here the box locations are filed together with the terminal reappearance information. Again, normal company security precautions are taken.

Each of these offices contains information which must be available to installers and repairmen. Accordingly, they have

official company telephone numbers which the man on the job can call. Now, since the number of linemen is so great, they cannot be known individually to all the office people, and some unauthorized person could call in and get the information on a pair assignment. To do this, however, he would have to be familiar with the detailed operations of the local company and know what number to call. This explains why so many wiretappers are ex-telephone company employees—ex-, because the company policy generally is to fire anyone caught misusing the information to which he has access.

The extent to which the line information is made available to law-enforcement personnel may vary greatly from state to state and city to city as has been seen in the chapters of this book dealing with the detailed study.

In general, the telephone system is most vulnerable between the instrument and the point at which the cable goes underground. Were it worth the while for someone to tap an underground cable, all that would be needed would be the knowledge of where it was buried, the equipment to dig it up, open, and reseal it, and an instrument such as the one previously described for locating a desired pair. However, although theoretically feasible, this would be a very difficult task, and with large cables virtually impossible.

There are still other places, aside from the terminal box, for making a tap. If the would-be listener can get access to the house, apartment, or office where the telephone is located, he can make direct connections to the line at any convenient place, and in the case of an office building or apartment, he can run wires through the wall to a new location. Some private investigators have described the use of conductive paint for making invisible connections. This paint consists of a suspension of silver particles in a vehicle

of plastic dissolved in a volatile solvent. Two stripes of it may be painted on a wall and when dry will be conductive enough to be used as ordinary wires. Camouflaged with other wall paint or paper, they will be virtually invisible. The connection may be made at the wall terminal, that is, where the telephone cord is joined to the wire that comes from the building entry. The stripes may be painted right up onto this terminal, or they may make connection underneath it. Only the most careful inspection would reveal a skilfully done job of this type.

To avoid detection while plying his trade, the telephone tapper needs more than a knowledge of the desired terminals and the necessary equipment. If a person in the middle of a telephone conversation were suddenly to hear a click or a drastic change of volume, he or she would be suspicious. To avoid connecting during a conversation, the tapper first "samples" the line by connecting one side of his listening set to the line, grasping the other side of the set between his fingers, and making contact with the second line through the moistened finger of his other hand. The resistance of the human body is great enough to limit the current drain to a very low value, but the presence of a conversation can still be heard in the unauthorized handset.

When the coast is clear, the tapper connects to the desired wires or terminals, but he inserts in series with his equipment a capacitor, which is a device through which alternating current will pass, but direct current will not. Thus the tapper places no direct current load on the central office battery and from that standpoint, at least, he is safe.

To avoid alternating current "loading," resulting in a change of volume, the skilful tapper will use high-impedance equipment, as was explained before. The usual system has an impedance level of the order of 500 ohms. If the tapper uses equipment having, say, fifty to a hundred times

this, no detectable volume change will occur. Of course, such a high-impedance is readily obtainable with the amplifying equipment used in connection with recording the conversation.

One final point should be brought out regarding the skill needed for a good tap, and that is the need for avoiding an unbalance in the line. The normal line is balanced with respect to ground, which means that neither line is grounded and both measure the same impedance to ground. If this balance is upset, for example, by attaching equipment having "ground" connections, then the telephone company can detect the presence of such equipment in routine tests. The tapper avoids this by using an "isolation transformer" to connect the telephone line to his "grounded" equipment.

Inductive Tapping

So far, the type of telephone tapping called "direct tapping" has been discussed. Some tappers have claimed that such tapping is too old-fashioned, and that perfectly adequate results may be obtained with much less work by the use of "inductive tapping." In this technique, the conversations are picked up without physical connections being made to the wires involved. Everyone who has used the phone to any extent has sometimes faintly heard a conversation in the background between other subscribers. This effect may be due to an unbalance with respect to ground of one of two proximate, parallel lines, and it is called "cross-talk." It is closely related to inductive tapping, and happens in the following manner.

The transmission of electrical signals down a line can be explained in terms of voltages and currents, but electric and magnetic fields are also present in any active electrical circuit. These fields are constrained by the wires, but exist in the space between them, and when the line is unbal-

anced they exist also in the space surrounding the complete circuit, getting weaker as the distance from the wires themselves increases.

If an alternating magnetic field produced by one circuit "cuts" a second circuit, an a-c voltage will be induced in that circuit. This is the principle upon which the transformer works and is called "inductive" coupling. In a similar way, an electric field from one circuit may induce a voltage in another through what is called "capacitive" coupling.

In the case of inductive coupling the magnetic field may cut the second circuit not only once, but several times. This is accomplished if the second circuit is "coiled." In this case, the induced voltage of each of the turns of the second circuit add up, and a "step-up" transformer is the result.

If one pair of telephone lines runs closely alongside another pair both inductive and capacitive transfer can occur, but the induced voltages are very small at any one point. The lines would have to run parallel for a very great distance for sufficient energy transfer to occur, so that cross-talk would be audible. Cross-talk of this type is suppressed, even when lines do travel alongside one another for great distances, by periodically changing the orientation of one pair with respect to the other and by maintaining at all times "balance" with respect to ground. Therefore, the cross-talk phenomenon itself is not of much use to the telephone tapper.

However, if either capacitive or inductive pickup could be enhanced at some point, then perhaps no connection would have to be made to the wires. Inductive pickup is the more practical. The telephone pairs in the cable and in the drop loop are spaced close together, and balanced with respect to ground, causing the fields to be confined closely to the wires. In the older cables the lead sheath fur-

ther prevents any detectable leakage of fields to the outside. Consequently, if one is to couple to a telephone system one must first find some place where the wires spread out in such a fashion as to cause the associated magnetic fields to expand also. Such a place is the telephone set itself. Here the wires enter the instrument in a "cord" and immediately spread out to go to various terminals inside. If a coil having a great many turns of wire is placed in close proximity to the set, as shown in Figure 8, the weak magnetic fields present will "cut" the turns of this coil, and the induced voltage per turn will be multiplied by the number of turns, resulting in a substantial value of output voltage at the tapper's disposal.

The physical makeup of the induction coil is not rigidly prescribed. The number of turns may be of the order of 2500, necessitating very fine wire. The use of a special magnetic core for the winding might enhance the effect to some extent, but is not demanded.

In one form, the induction coil is a cylinder approximately four inches long and $\frac{3}{4}$ inch in diameter. Such a coil may be equipped with a rubber suction cup to provide a means for fastening onto a surface in close proximity to the phone itself. One such surface might be the wall of an adjoining phone booth, in the case of a pay phone. When the phone to be tapped is a desk set, the tapper frequently resorts to an induction coil wound in a flat configuration. This may then be concealed by a desk blotter or placed in a desk drawer.

Inductive tapping may be done in other places than at the instrument itself. One example is the wooden junction box to which the subscriber is connected. Here, one can open the box, spread or loop the bridging wires slightly so that the magnetic field is less constrained, and place an induction coil close enough to pick up the phone conver-

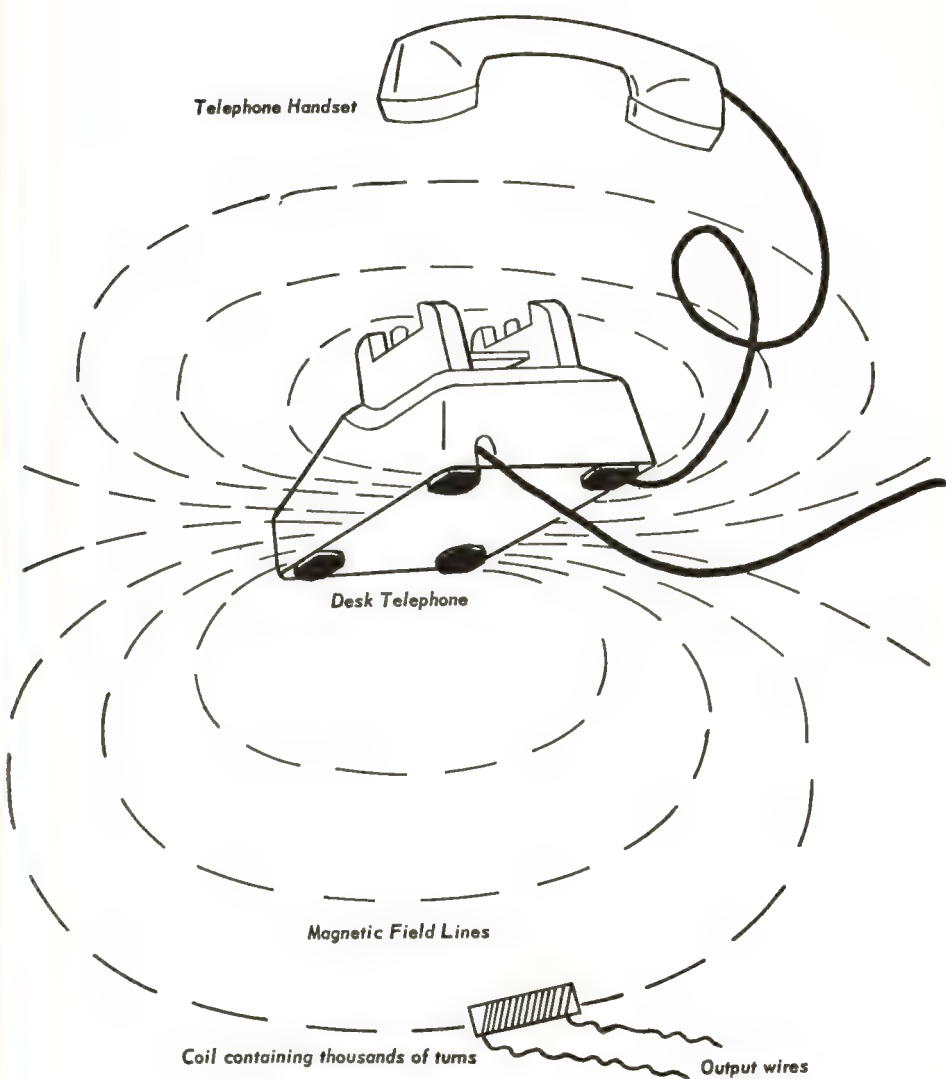


Fig. 8. Inductive Tapping

sation. The advantage of such an arrangement is the speed with which it can be installed (and removed).

Should one wish to tap a telephone line at any point other than at the junction box or the instrument itself, the individual pairs must be located and spread or looped so that the pickup coil can be coupled to the magnetic field. Should it be possible to break the circuit and insert a coil of wire in series, the pickup could be greatly enhanced.

Although to the writer's knowledge it has not yet been done, it certainly would be feasible to design an inductive tap after the principle of the "clamp-on ammeter." In this device, a transformer is employed with a magnetic core which can be opened, so that it can be clamped around a wire, sampling in this way a generous portion of the wire's magnetic field. Such a device is instantaneously installed and removed. The advantage of this construction would be that it could be used on any telephone wire in a building, if accessible.

As to the limitations of inductive tapping, one investigator, who has testified before a number of legislative committees, has reported using the technique a number of feet away from a phone booth, and he also has spoken of being able to select from a group of telephone booths a particular conversation in which he was interested. A simple calculation based on certain assumed features of the telephone system and pickup coil, and a typical nearby 60-cycle house circuit, shows that a distance of two feet is a reasonable practical value for a limit. There is nothing sacred about this two-foot limit, however. If one were inductively tapping an isolated phone, far from all 60-cps power lines, appliances, and ignition systems, then one might reach more than twenty feet before what is known as thermal noise obscured the message. Of course, the desired signal would be much too weak to hear in earphones and would require

a great deal of amplification. As for selecting one telephone out of a group in close proximity, all being used at once, it is very difficult to accept this. It is the opinion of this writer that such a task is impossible with the present-day telephone systems.

Auxiliary Equipment

It was previously pointed out that the eavesdropper generally desires to make a record of what is heard. The usual way of doing this is with a magnetic tape recorder. This will be discussed in some detail later and so will not be treated at present. There are, however, other devices that are used as adjuncts to the tape recorder. The first is a number register, which records numbers called from the tapped phone, and the second is a device for automatically turning on the tape recorder when a telephone conversation takes place, so that the equipment can be left unattended.

The need for the first item should be obvious. It is essential that the telephone tapper know whom his victim calls. The rapid clicks that the dial mechanism introduces on the line make it virtually impossible for him to tell what number is being called, whether he listens directly or by playing back a tape recording, unless the recording is played back at a much slower than normal speed. Some law-enforcement agencies have used this latter system with success.

However, as has been stated, there are mechanisms that separately record the numbers called. In one device, when the receiver is lifted from the hook in the tapped instrument, the flow of direct current from the central office through the carbon microphone causes a relay to trip, operating a switch which turns on the number recorder. Immediately, a motor starts which drives a paper tape roughly the width of a typewriter ribbon through the actual recording mechanism. This latter consists of a ballpoint pen or an ink-

filled stylus operated by another relay, which in turn is operated by impulses produced on the line by the dial mechanism. It is possible to arrange the circuit of the device so that it shuts itself off after a pre-set interval corresponding to the normal dialing period plus a margin of safety. In this way the paper tape will not be wasted.

Usually the dial on the instrument is turned rapidly to the number and then released. It is only the evenly spaced electrical pulses resulting from the release that are recorded, since the initial movement does not operate the dial switch contacts in the instrument. Figure 9 shows an extremely simple version of such a dial register.

There are two versions of the second piece of auxiliary equipment used for automatically starting tape recorders. In one version, which may be called a "line-operated switch," the tape-drive mechanism starts when the telephone is removed from the hook. It consists of a turn-on relay similar to that in Figure 9, but without the timing device. Lifting the receiver causes a direct current to flow in the turn-on relay, which operates a switch starting the tape recorder motor. Replacing the telephone on the hook turns off the motor.

The second type is known as a "voice-operated switch." This further conserves recording tape by not allowing the motor to turn until a conversation takes place. In this device, a sample of the alternating-current voice signal voltage on the line is converted into a direct current signal. The presence of this signal in a vacuum tube circuit causes it to deliver direct current to a relay which then turns on the tape motor. Although the process is lengthy to describe, it all takes place before more than the first few words are spoken. Usually the control circuit is so arranged that the motor will continue to operate for perhaps fifteen seconds after the talking ceases, so that it will not be constantly

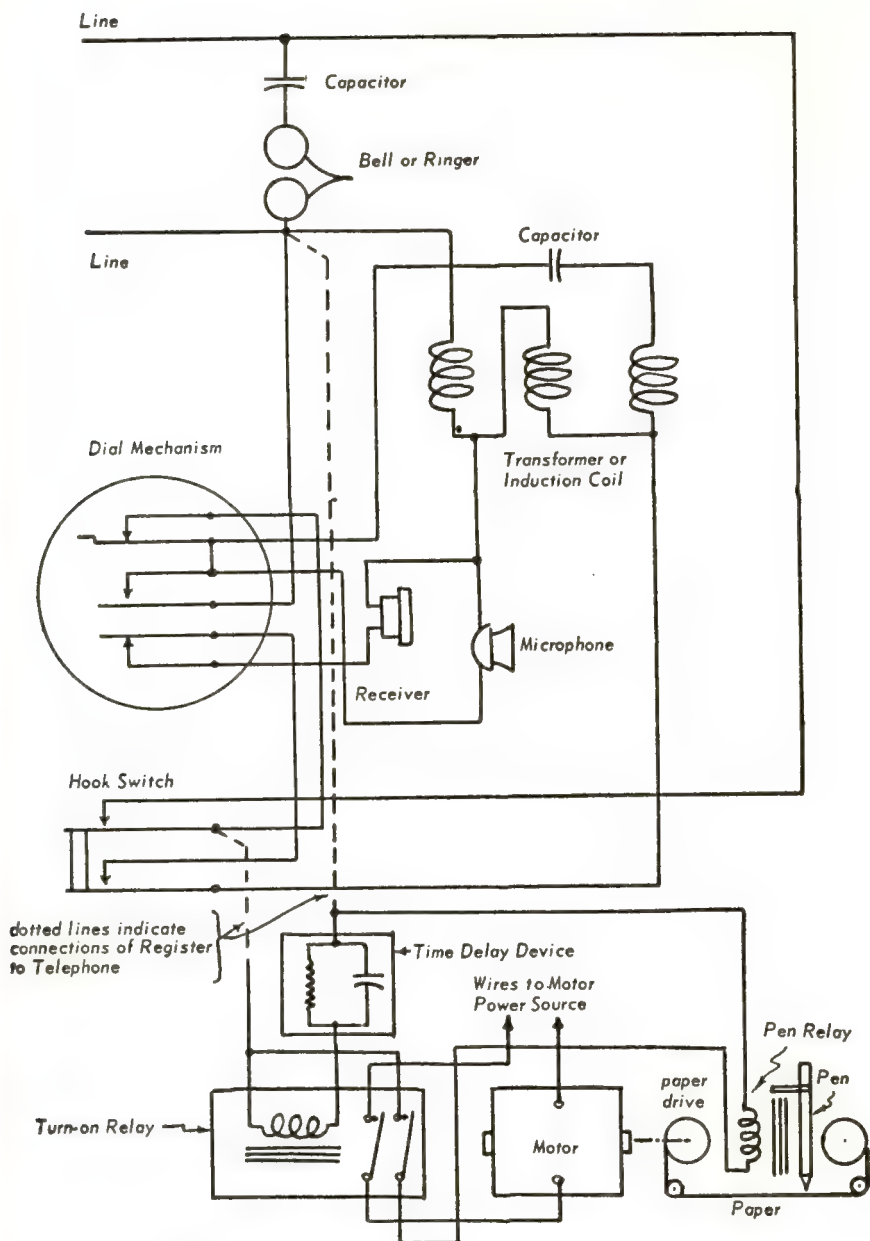


Fig. 9. Schematic Diagram of Dial Register

starting and stopping as the conversation alternates between speakers.

Availability of Wiretapping Equipment and Accessories

Generally speaking, complete do-it-yourself wiretapping sets are not available to the man in the street, nor does the Western Electric Company, manufacturing subsidiary for the Bell System, normally sell telephone equipment to individuals. Nevertheless, the well-informed technician or private investigator can obtain, perfectly legally, everything needed for practicing this art. In the first place, the electronic surplus dealers from time to time offer telephone equipment for sale, some of it obsolete civilian equipment, some of it used or unused military surplus. In this way, desk telephones or handsets can be acquired at very reasonable cost, for example, \$10-\$20 apiece. Inductive pickup coils are also available through this channel. Only recently the writer saw a flyer in which these pickups were listed at \$2.90 apiece, three for \$8.10. The various electronic components and relays that could be used in a number register or an automatic turn-on switch for a tape recorder are the same as those used by radio amateurs and electronic engineers daily. The clever technician could probably build both these devices for less than \$35, buying the parts brand-new at an electronic supply house. The same thing may be said for conductive paint. This paint is available for constructing what are called printed circuits. Different grades cost varying amounts; a typical price is \$2.50 per ½ Troy ounce bottle; however, this quantity would probably not be sufficient for any substantial length of painted circuit.

The real investment in telephone eavesdropping is in the tape-recording equipment, which may range from a poor-quality \$80 instrument to a \$500 high-grade piece of equipment.

Detecting Taps and Defense Against Them

What tests can the telephone company perform to detect either wiretapping or tampering with the line? The enclosed cable containing up to thousands of pairs is very vulnerable to damage. The wire pairs are very small and physically weak and the insulation between wires is only treated paper, making the cable sensitive to moisture pickup. The mere opening of the cable on a humid day changes the electrical "leakage" considerably. This results in a higher transmission loss, causing more numerous complaints by subscribers about the state of the service, if it is not caught by one of the routine insulation tests that the company constantly performs. When these routine insulation tests are made by a trained technician, he can tell from the "kick" of the needle on the instrument he watches just what sort of fault may be expected on a bad line. What this "kick" really indicates is line capacitance, and although this changes from moment to moment as other proximate lines are connected or disconnected, it has certain well-defined limits for normal operation for each subscriber. Placing another instrument on the line indiscriminately may cause these limits to be exceeded. Private investigators could likewise perform these tests in checking a line for taps. The only thing necessary is to have some idea of the normal behavior of the line before the suspected taps were placed on it.

The company has other tests it can make, some of which are feasible for the private detective. The line can be tested for unbalance by the use of what is called an impedance bridge. The telephone tapper would have to have been very crude in his methods to make the mistake of causing an unbalanced line.

There is also a ring-back test, in which the alternating ringing current is measured when the subscriber's bell is

rung. The presence of a larger than normal current indicates another regular instrument on this line.

It has been claimed that there is a device for detecting the presence of a tape recorder attached to the line. The principle upon which such detection could be based resides in the fact that most tape recorders for technical reasons contain an ultrasonic oscillator, operating between 20,000 and 100,000 cycles per second. Such frequencies may leak onto the telephone line from the tape recorder and subsequently be detected by proper equipment. A cathode-ray oscilloscope would do the job nicely.

Although inductive taps as such are probably undetectable, a tape recorder connected to such a tap may couple some oscillator signal onto the line. The wiretapping technician apprised of this weakness in his equipment could easily correct the deficiency.

Finally, a line may be checked for taps by visual inspection. Even here one cannot be certain of finding them. The tapper who has connected to the rear of a baseboard connection with conductive paint, or who has bored through the rear of a terminal box to connect fine wire that blends with the rough surface of a telephone pole, may succeed in having his work overlooked. It cannot be emphasized too strongly that a visual inspection means actually looking at each element, down to the last screw connection, from all sides.

From time to time the idea has been circulated that the presence of a tap on a line is distinguished by a crackling noise, by clicks, by other sounds. Generally speaking, this is not so. Only a very crudely placed tap would cause any additional noise.

Another false notion is that there is a number one can dial which automatically will allow him to check his line.

The only number one can dial is the telephone company's number, in order to report one's suspicions of meddling.

If the whole telephone system were redesigned, it could be made much more tap-proof. However, the job would be so costly and disruptive to millions of subscribers, that it could hardly be justified. One method that has been suggested for controlling illegal wiretapping would be to lock all terminal boxes. However, it is doubtful if a wiretapper would be deterred by a padlock. A much more elaborate lock would be required.

If all subscribers' lines were replaced with shielded pairs (*i.e.*, a grounded conductor surrounding the two wires), the vulnerability of the connection would be reduced. However, the transmission characteristics of the system would be altered drastically, so that many other changes would result. Electromagnetically shielding the now-locked terminal boxes and the telephone instruments themselves would reduce the susceptibility to inductive taps.

Many government agencies use cables pressurized with gas, in which any tampering with the line causes a release of gas. The consequent lowering of pressure sets off a warning signal which alerts security personnel. One private investigator has proposed a way to tap even this "tap-proof" cable. Whether or not his method would work is not reported, but the point is that each protective step taken stimulates the development of new techniques for circumventing the defense.

It has been questioned whether a voice "scrambler" (and descrambler) would not greatly increase telephone security. Such devices have been built and are secure so long as the eavesdropper does not know the particular scheme being used to scramble the speech. Once the code is known, however, a descrambler can be designed. Voice scramblers range in complexity from comparatively simple circuits to highly

complex ones. One of the simple ones could be built for about \$100, and the companion descrambler would cost about the same. Not too many telephone subscribers would care to pay this for regular use, unless there were something very important at stake.

Extraordinary Cases

In some states, law-enforcement agencies have obtained leased lines by means of which they can listen in on any conversation from the police department's headquarters or the district attorney's office. This connection may be made, assuming the leased line is in place, by means of an operator making the connections.

Obviating the need for this to some extent is what has been called a "no-test selector" or "verification distributor," by means of which one can be connected to a line already in use by dialing a special number. The Pennsylvania Bell Telephone Company ceased using such automatic selectors many years ago, but the general idea was that by dialing an additional 0, usually from out of town, it was possible to dial and be connected to terminals already in use. The principal purpose was to permit operators to find out if a customer's line was really in use or whether there was some trouble.¹

Private branch exchanges are available with "executive override," by means of which the employer can listen in on any of his employees' phone conversations without detection.

CONCEALED MICROPHONES

Introduction

The procedure in the case of concealed microphones is much more straightforward, generally speaking, than that used in tapping a telephone. There are two basic tech-

niques. One is to make use of a hidden microphone (any one of several types) in a room where a conversation is to be monitored. The other is to use a highly directional microphone, which can be aimed from concealment to pick up a conversation some distance away.

Basic Microphone Types

The action of the carbon microphone has already been described in the section on the basic telephone system, but there are a number of other types available, each with its own characteristics.

One of these types, much used by eavesdroppers, is the condenser microphone (more accurately called a capacitor microphone). Figure 10 is a functional diagram of this device with its associated circuit. The two elements in the microphone are polarized with the battery, that is, the capacitance between them is charged. As sound waves cause the diaphragm to vibrate, the capacitance changes accordingly, because it depends upon the spacing, and this changing capacitance results in a varying voltage across the microphone terminals.

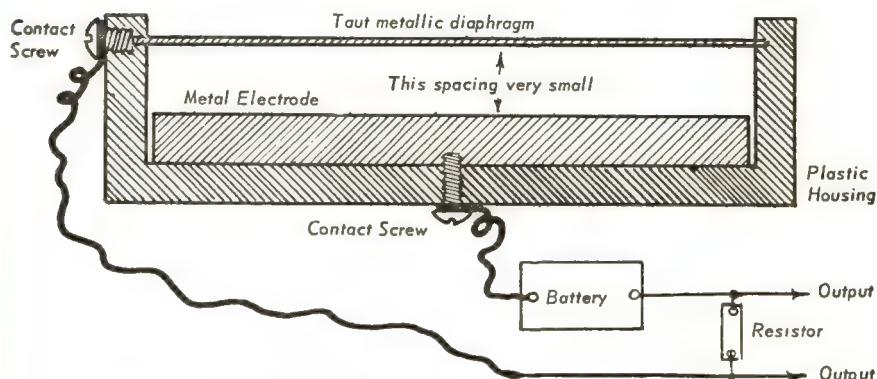


Fig. 10. Functional Diagram of Capacitor Microphone

The electrical output of the capacitor microphone is much less than that of a carbon microphone, but it can easily be amplified. It is very compact and essentially free of noise. The latter statement must be qualified, however, by pointing out that the capacitor microphone is basically a high-impedance device, and consequently it is sensitive to induced noise from 60 cycle-power lines and other sources, if it is not carefully installed.

In eavesdropping work, the capacitor microphone has been used in a special circuit with a high degree of success. The capacitor is made part of an inductive-capacitor circuit fed by a fixed high-frequency generator (part of the auxiliary equipment). The variations of capacitance are felt as a changing load on the generator, which results in an amplitude modulation of the output. This is detected or demodulated in another part of the circuit, and the audio voice signal that results is amplified for whatever use may be desired.

The basic capacitor microphone was the first precisely made microphone used in the radio industry, but has been largely replaced by the dynamic microphone which will be discussed next. Because of this, most electronic supply houses do not have condenser microphones listed in their catalogues. Nevertheless, they are manufactured and are available on special order.

Another basic type of microphone depends upon electromagnetic induction, the phenomenon governing rotating electrical generators. One important member of this class is the moving-coil or dynamic type. Figure 11 is a functional diagram of this. The vibrations of the diaphragm cause a single turn coil of wire to "cut" a magnetic field, that is, the amount of magnetic flux passing through the coil changes with the motion, so that a voltage is generated. Like the capacitor microphone, this type is very much less

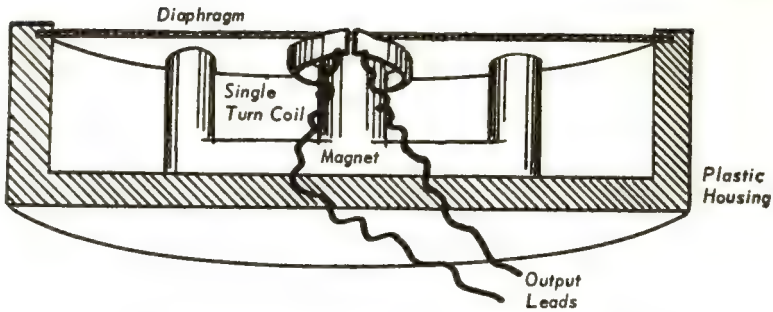


Fig. 11. Functional Diagram of Dynamic Microphone

sensitive than the carbon microphone. It can be small in size and is characterized by ruggedness and low electrical impedance. This latter quality makes it in some ways easier to apply in practice, because of less inherent sensitivity to hum pickup and electrically induced noise.

The dynamic microphone is available from all electronic supply houses, as it is widely used by radio amateurs, broadcasters, and sound engineers. Many of these commercially available models are small enough for eavesdropping use, and, in addition, special, miniature ones may be obtained through other channels.

The electromagnetic class of microphone includes types other than the dynamic or moving coil variety. A very common one, much used in field telephone work, is the so-called sound-powered microphone. In this construction, shown in Figure 12, the coil does not move, but rather the magnetic structure is caused to vary in accordance with the impinging sound waves. The electrical impedance of this device is usually around 1000 ohms, higher than that of the dynamic and carbon types, but much less than that of the condenser microphone. A somewhat similar type of construction is used in the variable reluctance microphone which comes in models as small as one inch in diameter. These

microphones are rugged and generally inexpensive. The sensitivity is roughly the same as that of the dynamic type.

Yet another member of this electromagnetic family is the ribbon or velocity microphone. These devices are standard equipment for broadcasters. They are characterized by being basically bidirectional, that is, sensitive mainly to sounds coming from the front or from the back, but not from the

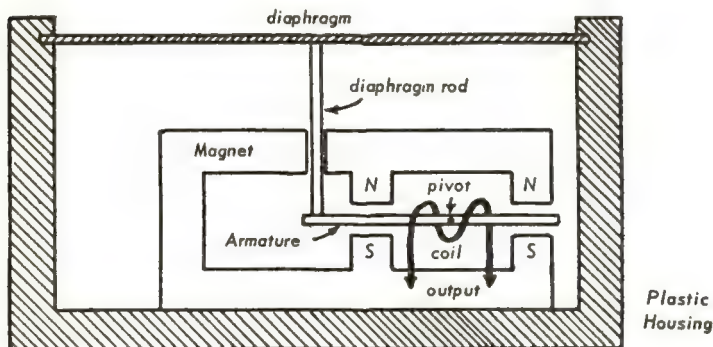


Fig. 12. Functional Diagram of Sound-Powered Microphone

sides. They are quite expensive and generally not compact in size. Consequently, they find little, if any, application in eavesdropping.

Finally, there is the piezoelectric group, the foremost member of which is the crystal microphone. It makes use of the phenomenon that some mineral or synthetic crystals, when subjected to mechanical stress, exhibit a difference of electrical potential between two well-defined points in the structure—the so-called piezoelectric effect. Rochelle salt crystals are commonly used for microphone (and phonograph pickup) applications. Figure 13 is a sketch of how a microphone of this type works. A slab cut from the crystal is mounted between two plates. The impinging sound waves cause a varying deformation of the crystal and a fluctuating

potential appears on the plates. The output is low, as in the condenser microphone, and the electrical impedance is very high. Consequently, this microphone, if improperly used, can pick up considerable induced 60-cycle hum and noise. In addition, the crystal slab is fragile and sensitive to temperature and humidity, so that ruggedness is not a feature of this device. It finds application in the eavesdrop-

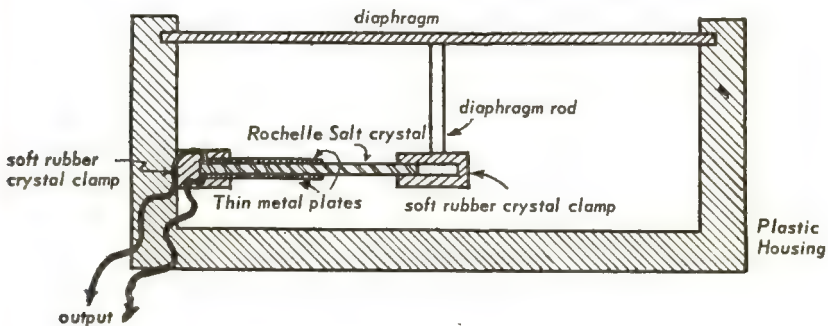


Fig. 13. Functional Diagram of Crystal Microphone

ping field, however, because it can be built very compactly and is relatively inexpensive. Similar to the crystal microphone is the ceramic type. This uses a piezoelectric slab of barium titanate in place of Rochelle salt, and is free from temperature or humidity damage.

Both crystal and ceramic microphones are available from regular electronic suppliers, even in the miniature sizes, for they are used extensively by hobbyists building transistorized amplifiers and gadgets.

Table I compares the various microphones discussed both as to their performance characteristics and their availability and cost to the eavesdropper. It is difficult to make such a tabulation, for the actual electrical specifications are somewhat obscured. For example, the sensitivity of the carbon

TABLE I. COMPARISON OF BASIC MICROPHONE TYPES

Type	Basic phenomenon	Impedance level	Sensitivity	Inherent directivity	Internal noise	Electrical noise pickup	Battery req'd	Ruggedness	Estimated minimum size	Availability and cost
Carbon	Varying resistance	Low	High	None	High	Low	Yes	Rugged	2" dia. x $\frac{3}{4}$ " th.	Readily avail. \$1.50 up
Condenser	Varying	High	Low	None	Low	High	Yes	Rugged	Basic element 2" dia. x $\frac{1}{2}$ " th.	Avail. through special outlets, particularly with equipment; expensive
Dynamic	Electromag.	Very low	Low	None	Low	Low	No	Rugged	4" x 3" x 2" with housing	Readily avail. \$10-\$100
Sound-powered and variable	Electromag. induction	Low to medium	Low	None	Low	Low to moderate	No	Rugged	1" dia.	Readily avail. \$5-\$20
Ribbon	Electromag. induction	Very low	Low	Bi-direct.	Low	Low	No	Fragile	3" x 2" x 1" with housing	Readily avail. \$50-\$200
Crystal	Piezoelect. effect	High	Low	None	Low	High	No	Fragile	$\frac{1}{2}$ " dia.	Readily avail. \$5-\$30
Ceramic	Piezoelect. effect	High	Low	None	Low	High	No	Fragile	$\frac{1}{2}$ " dia.	Readily avail. \$5-\$15

microphone is listed as high, whereas for all the others sensitivity is listed as low. This will not enable one to choose intelligently between the various types on this basis alone. However, size, availability, cost, and ruggedness are frequently more important to the eavesdropper than electrical output, since all the microphones listed have sufficient output for driving amplifiers of one sort or another.

One of the important qualities stressed here has been whether or not the microphone is basically a high- or low-impedance device. High-impedance microphones, such as the capacitor and crystal varieties, work best when connected to the amplifier through a very short length of connecting cable. This is not only a matter of the noise pickup, but also of not having "stray" wiring or cable capacitance load down the circuit, that is, decrease the available signal voltage. Low-impedance microphones are not overly sensitive to these effects and may be connected as much as fifty to one hundred feet away from the amplifying equipment.

Microphones, no matter what their basic elements, are not equally responsive to sound from all directions. Instead, they are directional devices. How directive they are depends upon the design of the motional element and the housing. Usually information on their directivity is available from the distributor, unless the microphone is an extremely cheap one. The directional property is a two-edged sword for the eavesdropper. On the one hand, it creates problems in picking up the voices of several speakers equally. On the other, it can play a large role in eliminating undesirable sounds.

In addition to directional discrimination against noise, the microphone may exhibit frequency discrimination. The inexpensive carbon microphone, for example, responds primarily to voice frequencies (500-3000 cycles per second); hence, it discriminates to some degree against extraneous noises outside this band. Of course, sometimes carbon mi-

crophones are subject to "hissing" or "clicking," so that the noise discrimination advantage may be lost. Electromagnetic and piezoelectric microphones, on the other hand, are internally quiet devices. If one purchases a low-quality, inexpensive model of one of these pickups, he may find the frequency discrimination of some help in suppressing outside noise.

The capacitor microphone is a high-fidelity device, as are the more expensive crystal, dynamic, and ribbon microphones. Use of such a pickup, if not directive, will result in good reproduction of background noise as well as the sound desired. To improve the intelligibility one may resort to filters, as discussed later in the section on tape recording.

In the selection and planting of a microphone, consideration is usually given to the ultimate use of the intelligence. If enforcement officers are obtaining information useful only in furnishing leads for investigation, intelligibility without high quality is adequate. In a case where it may be required that a corroborating recording be available, high fidelity and freedom from background noise are important. In the first case, a "bugged" telephone (discussed in detail in the next section) or some centrally located, hidden, cheap microphone is sufficient. In the second case, special pains are taken to set the stage so that the microphone will be as close as possible to the subject. Only when the microphone is about four feet or less from the subject will a strong high-quality signal be picked up.

One other type of microphone should be mentioned here, chiefly because most readers will not realize that it is a microphone. In electrical engineering there is a principle called reciprocity which, applied here, says in effect that an "active" transducer (such as an electromagnetic, piezoelectric, or condenser microphone, but not a carbon microphone) can act either as a transmitter or a receiver. Thus,

an earphone or a loud-speaker can act as a microphone. An application to eavesdropping will be treated further on.

The Wired Microphone

One of the methods mentioned above is the use of the telephone in a room as a "bug." Figure 14 represents the telephone connection as shown earlier, but the additional dotted lines indicate connections that can be made that will place the instrument in constant readiness to pick up conversation in the room even when the receiver is on the hook. It will be noted that the added wire provides a path by-passing the hook switch contact to energize the carbon transmitter for direct current. To escape detection, a resistor is placed in series, which reduces the loading of the circuit. It is true that this may somewhat reduce the sensitivity of the microphone, but it will still be perfectly adequate. The transformer provides coupling to an amplifier or tape recorder set up in a "plant" and isolates grounded equipment from the balanced line. This microphone can function continuously, whether the phone is being used intermittently or not, and since it is drawing its energizing current from the central office battery, there is no microphone power supply to worry about. The actual bugging can be done rather quickly by replacing the regular receiver cord with one containing an extra wire. At the baseboard connection, the supplementary conductor is connected to one wire of a concealed pair. The other member of the pair is connected to the side of the line which will energize the transmitter. The telephone tapper can easily find the right line by experimenting with a voltmeter. The concealed pair, which might be of the painted type, then runs to a room where the listening and recording apparatus are located together with the resistor and transformer.

The technique just described, although feasible, has cer-

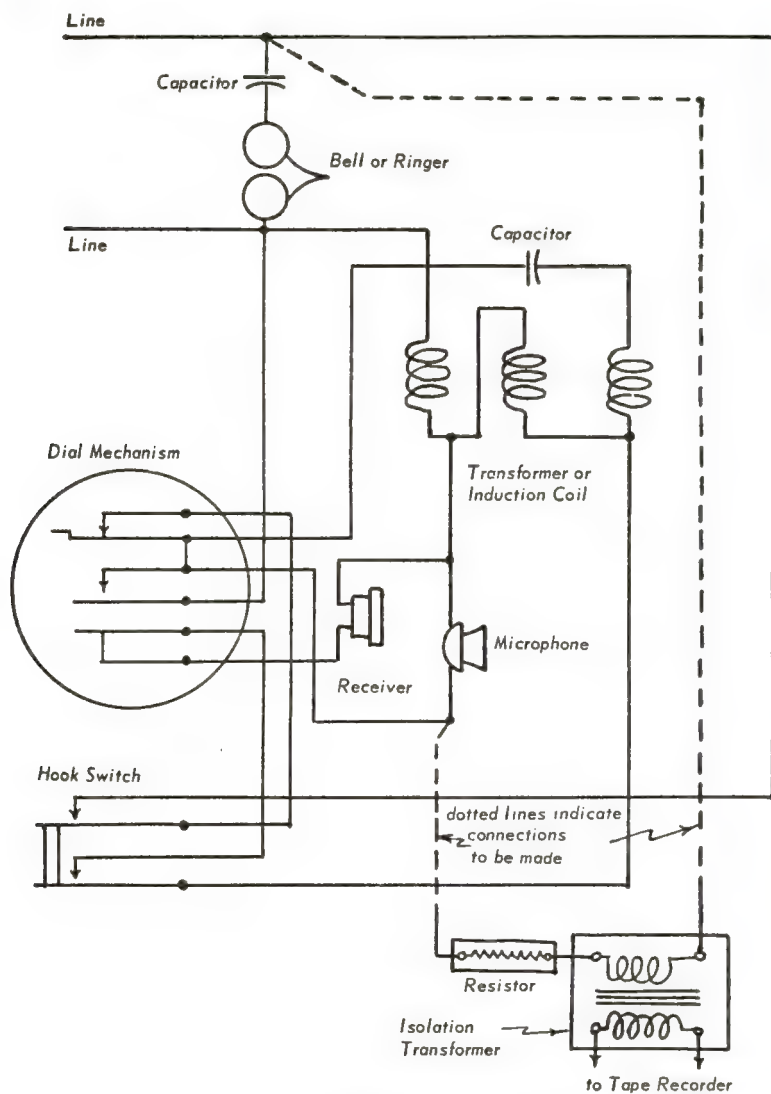


Fig. 14. The Bugged Telephone

tain drawbacks. Among these is the fact that the telephone may not be well placed in the room for picking up the desired talk clearly. Consequently many "snoopers" prefer to avoid bugging the telephone and instead "plant" a microphone in a well-chosen place in the room.

Once the type of microphone to be planted has been chosen, the problem of installing it has to be solved. For most installations the rule is to plant it as close as possible to where it will be needed and run concealed wires to the nearest place where the information can be dealt with further. In some cases, the wires will run directly to an amplifier-tape recorder setup. In others, they may run to a boosting amplifier which will transmit the information by further wires, or to a small radio transmitter which will send a wireless signal to the final "plant."

The microphone itself may be hidden in the upholstery of a chair, in a pot of flowers, or in a desk drawer. In addition, microphones may be obtained through special suppliers which have all sorts of innocuous-looking housings, such as desk pads. One of the hiding places for microphones which is often used is in the desk telephone, quite apart from the "bugging" operation previously described. Handsets are available into which separate microphones are built, so that no knowledge of the telephone set itself is needed for installation; or perhaps a microphone may be installed in the base of the instrument. Where access to the room is impossible, "contact mikes" are available which can pick up sounds through a common wall. The microphone is fastened to the wall with a spike which is driven into the common stud between the rooms, that is, the common column to which the lath or wallboard is fastened. Obviously, there are a few cases where common studding is not used, and in such cases this type of eavesdropping is impossible.

The wiring of the planted microphone must likewise be

concealed. Fine, almost invisible wires may be used instead of conspicuous cables for many microphones. The wires may run under rugs, along baseboards, or even through walls. Attention should be drawn again to the use of the painted wiring that was mentioned in connection with telephone tapping and bugging. Such painted wires would last until broken in some way, as by excessive vibration or mechanical abrasion.

Because of the small size, deceptive housings, and numerous types of microphones available, it is difficult to guarantee any certain way of detecting their presence. A thoroughgoing search of the premises is the most reliable way to find a hidden microphone, but is by no means infallible. Search of a room would not, for example, disclose a wall microphone in the next room. One proposal has been to use a mine detector for finding microphones. One such device is based upon the principle that a metallic object introduced into the magnetic field of a coil of wire alters the constants of that coil so that it behaves differently in a circuit. Mine detectors can detect objects the size of a penny a foot or more away. Probably the mine detector would detect wall microphones as well as the usual hidden types, but its disadvantage is that it is too sensitive. It would respond, for example, to the springs of a sofa, and the searcher, knowing this, might overlook the fact that a microphone was attached to those springs. It also might respond to nails in the wall so that a wall microphone could be missed.

Aside from finding and destroying the microphone, there is no sure way of providing defense against this invasion of privacy. It has been claimed that turning on a shower or creating some other sort of noise helps to foil a planted microphone. It is true that such tricks, by raising the general noise level, may partially destroy a microphone's effectiveness. Nevertheless, since the exact location and type of

the "bug" is unknown, it is difficult to be sure that one has foiled it. The frequency discrimination of some microphone structures might make the use of a shower of no value, since the audio frequencies in this type of noise are generally higher than those in the human voice. If one were certain that a planted microphone was a high-impedance one, then it would be possible to "jam" it to some degree with electrically created noise.

Wireless and Carrier Microphones

In situations where even painted wires are undesirable, the wireless microphone may be used. First developed for the entertainment field, the microphone-radio transmitter combination soon found an application in eavesdropping. An example is the Stephens Tru-sonic Wireless Microphone, costing more than \$200, and measuring $3\frac{5}{8} \times 2 \times 1$ inches exclusive of the power pack. In this device, a capacitor microphone varies the capacitance of the tuned circuit of an oscillator resulting in frequency modulation. The two-tube frequency-modulated transmitter broadcasts up to 1500 feet, and somewhere within this range auxiliary equipment must be located for picking up the transmission, demodulating it, and feeding it to a recorder.

Of course, wireless microphones are not confined to the Stephens variety. Although the most common mode of transmission is frequency modulation, the use of radio waves does not demand this. The principal advantage of frequency modulation over amplitude modulation is the almost noiseless transmission obtained. One carrier frequency often used in this service is 74 megacycles per second. No FCC license is required.

One investigator has reported building a wireless microphone circuit into a flat surface by using transistors and printed circuits. Such a construction enables the eavesdrop-

per to plant the device behind a picture on a wall or under a rug. The thickness would be not less than $\frac{1}{8}$ inch, and the outside dimensions might be 6 x 6 inches or less.

The forms into which wireless microphones can be built are as many as can be imagined. The wristwatch radio of comic strip fame is an actuality, and other equally harmless-looking packages are easily contrived. If one bears in mind that the dimensions of the Stephens device are about those of a pack of cigarettes and that transistorizing it would approximately halve its size, one gets an idea of the possibilities.

The cost of commercially available models of these devices is relatively high when compared with a cheap microphone-amplifier combination; yet it would be possible for a trained technician to build the same equipment for about \$100, including the auxiliary equipment. Transistorizing the equipment does not appreciably change the cost.

The batteries for wireless microphones are usually in a separate package. In the Stephens model, two battery packs are available. The larger one, measuring 6 x 4 x $1\frac{3}{4}$ inches, has a life of twenty hours for continuous operation. The more compact one, measuring 5 x 2 x $\frac{3}{4}$ inches, lasts two hours. Transistorizing the device might extend the battery life to two weeks, with a further reduction in size. It is difficult to be much more precise than this, although a transistor expert has told the writer that he feels the estimate of a two-week battery life is very conservative.

Another type of "bugging" that has been reported makes use of a so-called line-carrier transmitter. This is related to the wireless microphone because it uses a carrier. However, its signal is conveyed by wires. In this system, a miniature microphone modulates a small oscillator operating in the low radio frequency range (100 kc to several megacycles). Probably amplitude modulation is more convenient to use

here than frequency modulation. The oscillator is not, however, connected to an antenna, which to be effective at these frequencies would have to be quite long, but rather to the 60-cps power lines through small capacitors. The modulated radio frequency signal travels along the line and can be picked up by suitable equipment anywhere in the neighborhood, provided a power distribution transformer is not traversed. At the plant the signal is demodulated and the resulting voice signal recorded. It has been claimed that such transmitters have been made small enough to fit unobtrusively into the lamp receptacle of a floor lamp. It would seem to the writer that the line-carrier transmitter would have nearly the same size limitations as the wireless microphone.

The cost of the line-carrier microphone with its receiving device can be less than \$100, when it is made by a technician from standard parts.

The power for a line-carrier "bug" can be obtained conveniently from the power line it is to tap. Such a power supply can be made about the size of a pack of cigarettes or less.

One private investigator claims that a radio can easily be converted into a line-carrier transmitter. The principle involved is that all loud-speakers can be used as microphones, as was pointed out above, and this is, in fact, what is done in most interoffice communication sets. The so-called local oscillator in the radio can be utilized as the carrier source to be coupled to the power line through a small capacitor. The oscillator, in turn, is coupled to the loud-speaker for the application modulation by means of a miniature transformer. Finally the on-off switch has to be disabled, so that the set remains on. Whether the technique is applicable depends upon the particular radio circuit and configuration

involved. It probably would be far less useful than a planted microphone.

The detection of both wireless microphones and line-carrier microphones follows the pattern of search for wired microphones, with the added feature that the generated carrier in both cases is detectable with suitable equipment. Most wireless microphones work on 74 megacycles, and a receiver tuning to this band should be sufficient to detect their presence; the actual location must be found by the methods outlined before. For line-carrier microphones a low-frequency receiver could be used, or a cathode-ray oscilloscope could be adapted to the task. Again, the actual location is a matter of search. In neither case is such an electromagnetic detection scheme perfectly reliable, for the eavesdropper has a very large spectrum with which to work and few technicians have immediately on hand the equipment to search the complete frequency spectrum.

Highly Directive Microphones

The directional quality of microphones can be greatly enhanced to make them more or less analogous to optical telescopes. This acoustic application is not new. During World War I, and in the years that followed, quite a bit of work was done to develop aircraft sound detectors. It was not until the advent of radar in World War II that the use of such detectors declined. These devices could detect one or more airplanes a number of miles away, long before they were audible to the human ear.

It is well known, to even the non-technical person, that a properly designed curved mirror can focus light to a given point, just as does the optical lens. This is the basis of our huge astronomical telescopes. Similarly, an acoustically solid reflector, of the proper size and shape, can focus sound waves to a point. If a small microphone is located at that

point, a magnification of sound is observed. The factors that influence the degree of this magnification are the frequency (or wave length) of the sound, the shape and size of the reflector, and the size of the microphone.

The cross-sectional shape of the reflector is a mathematical curve called a parabola, and the three-dimensional "dish" is called a "paraboloid of revolution." If parallel "rays" of sound enter a paraboloid of revolution, they will converge to a single point, called the focal point. If the rays entering the paraboloid are not parallel, which is the usual case, they will no longer converge to the mathematically defined focal point, but, instead, to some other point. It is assumed in all this discussion that the wave length of the sound, that is, the physical distance between successive compressions, is very much less than the diameter of the paraboloid itself.

Sound from distant objects will be concentrated at the focal point, while sound from nearby objects will be focussed somewhere else. Thus, in the application of this principle to a directional sound pickup, a microphone is provided which can be moved to the point of focus wherever that may be. See Figure 15 for a sketch of the device.

The restriction, that the wave length of the sound is to be somewhat less than the dish diameter, is a crucial one from the standpoint of the directivity. It is a fundamental principle of all "beam" devices, whether optical, electromagnetic, or acoustical, that the larger the effective area, the narrower the beam. Hence, claims for the reduction of parabolic microphones to very small size without loss of directivity cannot be accepted. The data in Table II are adapted from Coile, "Parabolic Sound Concentration,"² to show the influence of wave length and dish diameter on the "beam width," *i.e.*, the angle subtended by points of zero pickup.³ It can be seen that at high frequencies, where the ratio of wave length to dish diameter is low, the pickup is very sharp.

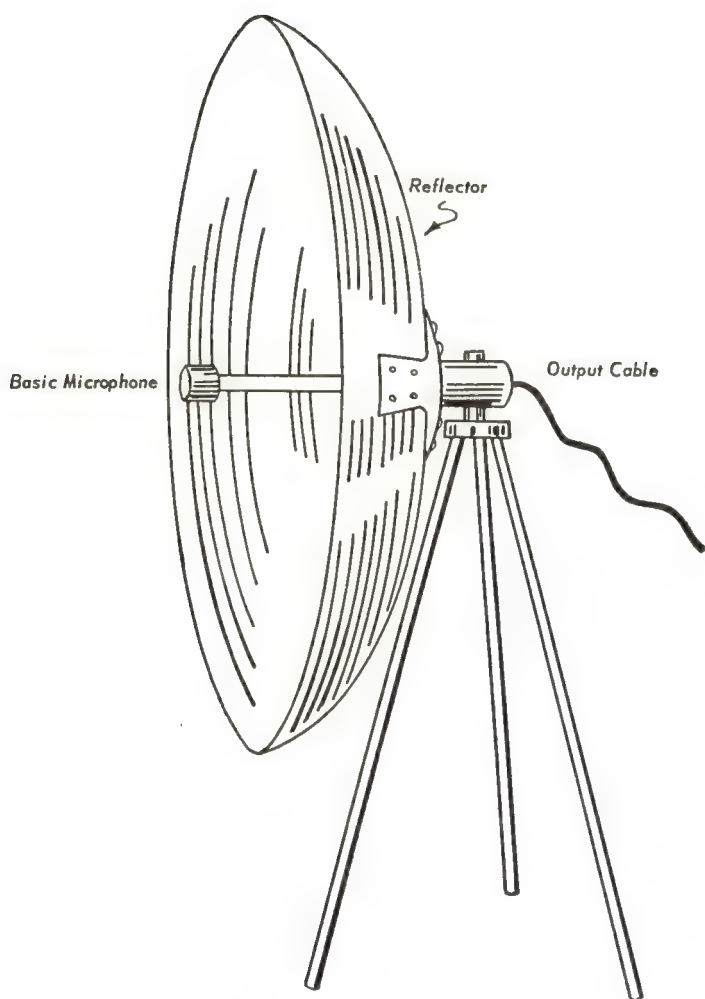


Fig. 15. Parabolic Microphone

TABLE II. DEPENDENCE OF BEAM WIDTH ON WAVE LENGTH AND DIAMETER FOR PARABOLIC MICROPHONE

Frequency, f	700 cps	1600 cps	3000 cps	5500 cps
Wave length, λ	19.4"	8.46"	4.49"	2.46"
Dish diameter, D	37"	37"	37"	37"
Beam width	45°	18°	9.4°	5.2°

At the low end, however, where the wave length is about half of the dish diameter, the beam width for a given voice would lie somewhere between these limits.

The size of the microphone used with the dish has a definite influence on the effectiveness of the final device. In the first place, if the pickup is not small, then it will not approximate a point acoustically, and some of the focussing effect of the reflector will be lost. In the second place, if the housing of the pickup microphone is large compared to a wave length there may be sound "diffraction" around it, resulting in a distortion of the beam. The same effect can occur if the pickup mike has appreciable sensitivity in the direction of the incoming signal.

The parabolic microphone has been used by the broadcasting industry particularly for picking up distant sounds at large gatherings such as football games and political conventions. For the eavesdropper it has obvious uses. Its principal drawbacks are: first, that to be effective it must be large and therefore requires concealment; and second, that it is so sharp in its discrimination that it needs to be aimed with a telescope and monitored continually to ensure that the subjects do not move from its field of coverage.

How effective is it? It has already been pointed out that acoustic aircraft detectors were effective up to several miles away. However, these were picking up engine noise, not intelligible conversation. An early worker estimated that for a parabola having an opening diameter of 10.5 feet and a depth of 2.6 feet, the magnification is about five times that

of the unaided ear for whispers. His work was done well before the parabolic sound reflector had been theoretically investigated, and it is probable that his factor of five should be somewhat increased.

The usual broadcaster's parabola is about three feet in diameter, and it is estimated that it is three to four times more effective than a regular microphone. Thus if a given microphone picks up a sound at five feet, one could expect that the same microphone mounted in a three-foot parabolic pickup could pick up the same sound at fifteen to twenty feet with equal clarity.

The effectiveness of a particular parabolic pickup depends upon the character of the sound to be detected and upon the noise present. The directional feature actually suppresses high-frequency noises lying outside the "beam." Whether such a device can be used at five hundred or one thousand feet, as claimed by some, depends upon the particular conditions, especially the sensitivity of the basic microphone used, the noise level, and the presence of obstructions in the path of the sound.

A typical problem might be to try to eavesdrop on a conversation taking place in an office on the opposite side of a hundred-foot-wide busy street. The first restriction is that the window of that office should be open and not obscured with heavy drapes or other sound-absorbing material. If the operation is carried out well above the street level, the parabolic microphone's directivity will discriminate against street noise. As for the hundred-foot distance, it is perfectly possible that a conversation might be picked up so as to be intelligible.

A second example of a possible use for the parabolic microphone is in the eavesdropping on a conversation in a restaurant or café from, say, a darkened balcony in the building. Although in this case the background noise would

intrude itself upon the conversation, the distance involved is probably less than in the previous case. Consequently, a successful recording of the conversation could probably be made.

The cost of the parabolic microphone ranges from perhaps \$50 for a home-made model made from military sur-

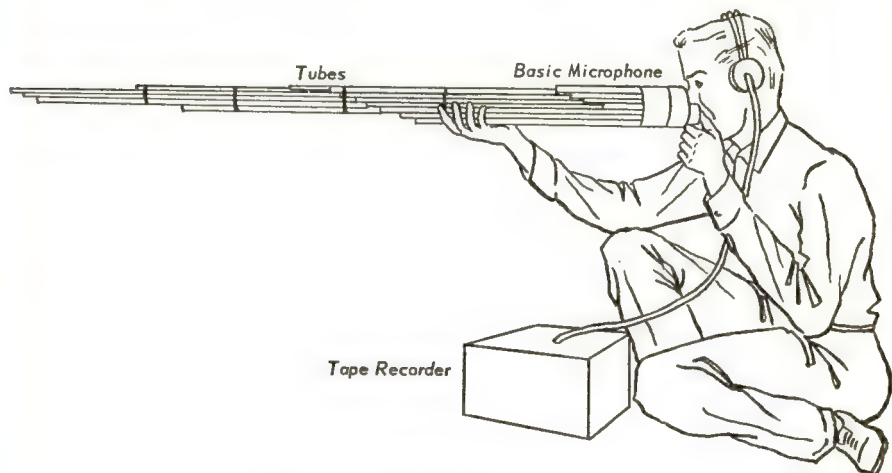


Fig. 16. Tubular Microphone

plus parts to several hundred dollars for a commercially built instrument.

Another type of highly directive microphone is the so-called "shotgun," or tubular, microphone shown in Figure 16. This device was developed in 1937 by the Bell Telephone Laboratories and was described in 1939 in a paper by Mason and Marshall.⁴

It consists of fifty thin-walled aluminum tubes, $\frac{3}{8}$ inch in diameter and varying in length from three centimeters to 150 centimeters (roughly $1\frac{1}{8}$ inches to five feet) in equal increments of three centimeters. The tubes are mounted on a common microphone housing containing either a Western

Electric Type 618A or Type 630 moving-coil, pressure-type microphone.

One of the features of the tubular microphone is a constancy of frequency response due to the overlapping of the multiple resonances in the various tubes.

Directional properties are obtained because only for axial incidence do the waves traveling down the various tubes add up and reinforce each other at the microphone. For oblique incidence the various waves have a tendency to cancel each other due to unequal path lengths. This is called "phase interference."

Tubular microphones are not generally available to eavesdroppers on a commercial basis. However, a few are in circulation in this field. It would not be difficult to make such a microphone, using the Mason-Marshall publication. The cost of materials should be well under \$100.

In order to compare directional microphones adequately, it is necessary to utilize a figure of merit called the "directivity index." This is defined as the ratio of the efficiency of the microphone at random incidence to the efficiency of the microphone at normal incidence. A non-directional microphone will have the same efficiency for both conditions, and its index is unity. The lower the index, the more directive the pickup.

Table III shows a comparison of the directivity indices for the tubular, the parabolic, and some other microphones.

It can be seen from the table that both the parabolic and tubular microphones are much more highly discriminatory than the so-called directional studio (*i.e.*, ribbon) microphones. However, the directivity index of the former changes very drastically over the frequency band, which accounts for the great change of beam angle given in Table II. The directivity of the tubular microphone, on the other hand, changes with frequency, but not so greatly. Practi-

TABLE III. COMPARISON OF DIRECTIONAL MICROPHONES *

Type	Size	Principle of operation	Directivity Index					
			200 cps	500 cps	1000 cps	2000 cps	4000 cps	8000 cps
Tubular unidirectional	3½" dia., 5' long	Phase interference	1/3.4	1/8	1/12	1/25	1/29	1/39
Parabolic unidirectional	3' dia., 1' deep, 25 lbs.	Concentration at focus	1/4	1/20	1/47	1/125	1/230	1/49
Ribbon bidirectional	3" x 2" x 6", 3 lbs.	Response proportional to pressure gradient	1/3	1/3	1/3	1/3	1/3	1/3
Combination ribbon unidirectional	3½" dia., 6" long, 4 lbs.	Phase interference of electrical outputs of ribbon elements	1/3	1/3	1/3	1/3	1/3	1/3
Diffraction 618A moving-coil	3" dia., 2½ lbs.	Variation of diffraction effect with angle of incidence of sound wave	1	1	1/1.5	1/2.3	1/5.5	1/6

* Adapted from W. P. Mason and R. N. Marshall, "A Tubular Directional Microphone," *Journal of the Acoustical Society of America*, January, 1939, p. 312.

cally, as one investigator has put it, this means that the tubular microphone is not so sensitive to speakers moving out of the "pickup field." As far as range is concerned, the same restrictions that govern the parabolic microphone also apply to the tubular microphone.

No highly directive microphone is readily detectable if thoroughly camouflaged. To be absolutely sure of freedom from eavesdropping with these devices, one would have to search over such a wide area as would be completely impractical in most cases.

Some Speculations on Ultrasonic and Radio Microphones

From various widely assorted places have come reports of microphones working on the principle that a "beam" of some kind directed into a room can pick up conversations there and upon reflection carry the information back to an eavesdropper. Since detailed descriptions of such devices do not seem to be generally available, this section will have to be speculative, using the little information there is.

Purportedly, one such microphone uses an ultrasonic

beam, that is, one made up of vibrations similar to sound waves, but lying above the range of audibility in frequency (that is, above 20,000 cps). The ultrasonic microphone is rumored to have been developed for military intelligence during World War II. We shall now take up its features one by one.

How is a beam created? It will be remembered that the parabolic microphone has a narrower "beam," that is, the greater directivity, as the frequency is raised. If the microphone element is replaced by a tiny loud-speaker, the transmitted sound will likewise be beamed, and the same sort of frequency law would hold, that is, the higher the frequency, the narrower the beam. Now, if the loud-speaker is in turn replaced by a special ultrasonic transducer capable of producing air vibrations of 50,000 cps, 100,000 cps, or even greater than one megacycle per second, the parabolic reflector would beam these waves, pencil-sharp, to almost a pinpoint focus.

In studying the nature of the ultrasonic pickup, one must first recall the Doppler effect. The whistle from a moving train appears to change its pitch. This is because the source of the sound is moving, and the sound waves emitted are "stretched" or "compressed" according to whether the train is moving away from or toward the listener. If the train could oscillate mightily back and forth at high speed, one would hear successive raising and lowering of the pitch; the sound would be frequency modulated. In the same way, an ultrasonic beam impinging upon a surface such as a wall set in vibration by sounds of conversation will have its frequency altered upon reflection; that is, the reflected wave will be frequency modulated; a suitable detector can, in theory, extract this information from the reflected wave.

The amount that the wall must move in order to produce a measurable frequency modulation determines the

minimum ultrasonic "carrier" frequency that can be used. If one assumes that a "measurable" output voltage from the detector (called frequency discriminator) would be one millivolt (about $\frac{1}{10}$ the output of a common type of high-quality phonograph pickup), and that the wall displacement is of the order of $1/10,000$ inch, the minimum frequency of the beam can be determined to be of the order of one megacycle per second. If more refined techniques were used or if the wall vibrated to a much higher extent, the ultrasonic frequency could be lowered somewhat.

The feasibility of such a device has been demonstrated with the conception of an ultrasonic instrument for measuring the vibration of surfaces at short distances,⁵ but to what extent the principle can be carried over into acoustical work is not certain.

The difficulty in using ultrasonic beams in this application is the high attenuation they suffer traveling in air. Beranek⁶ claims that such beams would travel only a few feet, and other information, recently published, seems to validate this claim.⁷ Ultrasonic beams are so rapidly absorbed in their passage through air that an almost unbelievable amount of power would have to be available to obtain a beam which could travel one hundred feet, and back again, and still contain enough energy to be detected.

Even if such a device were practical, it would not work with any obstructions such as curtains in the path of the beam. The equipment required to generate the original signal would be so bulky and expensive as to be out of the reach of the ordinary eavesdropper. If such pickups exist and are used at all, it is relatively certain that they are only in the hands of organizations with many resources at their disposal.

At one hearing on eavesdropping, it was asked whether a "radio" wave, that is, an electromagnetic wave, could be

sent into a room to pick up a conversation. At first, one would say "No," unless there were something in the room to pick up, modulate, and retransmit the wave. But a little thought will show that another possibility exists.

Consider a microwave beam (that is, above 1000 megacycles per second in frequency). At such frequencies, radio waves can be sharply defined much as in the case of the ultrasonic beam. In fact, the parabolic reflector used for the former, if made of metal, would work equally well for the latter. A microwave beam will be reflected if it strikes a metal surface. Furthermore, if that surface is vibrating, as in the ultrasonic case, the reflected wave will likewise be frequency modulated.

Assuming the same conditions as before, calculation yields a minimum required frequency of several hundred thousand megacycles per second, which is much too high to be practical. However, the minimum detector output in the previous example was set arbitrarily at one millivolt. Actually, techniques for working with much smaller voltages are readily available. Assuming $\frac{1}{10}$ of a millivolt as a reasonable value, the necessary "beam" frequency becomes of the order of 10,000 megacycles per second. This is a very practical choice, for equipment operating in this frequency band is readily available and signals are easily focussed into relatively sharp beams. Furthermore, a 10,000-megacycle-per-second signal has much less serious attenuation problems than has its ultrasonic counterpart, and it will penetrate, to some extent, even curtains, shades, and open Venetian blinds. All this discussion is pure speculation, since no such radio microphones have been described publicly in detail as far as this writer is aware.

However, a microwave vibration measuring device has recently been proposed, in detail, by Stewart⁸ who shows that with a signal frequency of 35,000 megacycles per second,

vibrational deflections smaller than one millionth of an inch can be detected. The range he discusses is of the order of one foot rather than typical eavesdropping distances. This may be due to the more limited power available at 35,000 Mc/s than at 10,000 Mc/s, and also the poorer transmission properties through air of the higher frequency.

One person interviewed in the course of this study mentioned hearing of a device used on some beach landings in World War II in which a "beam" sent from a ship standing offshore was concentrated on a small, metallic, handheld, corner reflector attached to a mouthpiece. This device purportedly was for relaying back information to the ship and would appear to work on the principle just described. Another report, allegedly published in a Washington paper although search has failed to verify it, mentioned a device beamed into the Russian embassy to pick up conversation there. Supposedly, the beam was aimed at the centerpiece of the Russian emblem, but whether there was a planted transponder of some kind there, or whether this piece was just a convenient metallic surface, is not certain. At any rate, such reports lend credibility to the explanation given here.

Assuming that the writer's description is roughly correct and that a 10,000-megacycle signal could be used for this purpose, the required equipment is not excessively complex, though it is doubtful whether the ordinary electronic technician would be able to improvise a suitable apparatus without guidance from a microwave engineer. Certainly the parts are all available commercially, and with careful buying of surplus parts, equipment of this type could be built for not more than \$1000 for materials.

The modern microwave relays which dot our hillsides cover fifteen to thirty miles per "hop" with very little power. A radio microphone such as the one described should

be capable of covering perhaps a thousand feet with no difficulty. The principal drawback in covering larger distances is the aiming of the beam toward the reflecting surface. Naturally, a sighting telescope would be required.

If devices of the type described are admitted as a possibility, defense against eavesdropping becomes a very specialized task, one which is no longer in the realm of the private investigator, but rather in that of the physicist or engineer. To foil an ultrasonic beam is not too difficult, since it has difficulty in passing through solid or porous substances. With a microwave beam the situation is quite different. Ordinary window glass passes 10,000-megacycles signals to some extent, so that closing the window is not necessarily a defense against this type of pickup, nor would shades or drapes guarantee privacy. However, metallic Venetian blinds, if closed, would foil this device completely if it were aimed through a window. To install a radio beam microphone would require considerable effort and experimentation on the part of the eavesdropper, and without his having the proper knowledge of, and experience in, microwave work, it is doubtful if he could succeed. To be certain of defense against any eavesdropping of this kind (and incidentally, against wireless microphones as well), one should shield his room completely with a continuous covering of aluminum foil and substitute for his window glass a special conducting glass made by several of the large glass companies (*e.g.*, Pittsburgh, Corning, and Libbey-Owens).

To detect the presence of either an ultrasonic or microwave beam requires special equipment, not now possessed even by relatively well-equipped organizations. No doubt, the skilled communications engineer or physicist could improvise something, to perform this task.

RECORDING OF SOUND

Disc Recording

The telephone tapper or eavesdropper usually records what is heard. In the early days of the art, it was necessary to listen continuously and have a stenographer on hand, ready to take down the speech or conversation with pencil and paper.

With the advent of portable disc- or cylinder-recording equipment, thirty or more years ago, the surreptitious listener obtained a device with which he could record a conversation directly. Even today, such equipment is available, but for the most part, it has been replaced by tape- and wire-recording devices, due to the latter's much longer recording time.

A complete discourse on sound recording would, of course, require a book in itself.⁹ It is possible here only to touch on some of the history and principles involved.

The invention of the process for the mechanical recording of sound is usually ascribed to Edison in the year 1877. His invention made use of a tinfoil-covered cylinder turned by hand, on which a sound-actuated stylus embossed grooves whose depth varied according to the sound vibrations. A reproducing stylus followed these same up-and-down, or hill-and-dale, variations when the formed cylinder was turned at the same speed as during recording, and was attached to a diaphragm which gave forth audible vibrations more or less corresponding to the original sound. The system was soon improved by associates of Alexander Graham Bell, who substituted an engraved wax surface for the embossed aluminum. The reason for describing this crude device here is that it was the direct ancestor of the cylinder-type office

"dictaphone." This dictaphone may have been the first instrument available to clandestine listeners for recording.

The "lateral" disc-recording technique which was brought forward by Edison's competitors, a number of years later, and which eventually displaced hill-and-dale recording, makes use of a disc in which the recording stylus cuts grooves which vary from side-to-side (or laterally) according to the sound vibrations. The playback needle, mounted compliantly in a relatively massive "pickup," vibrates back and forth as it traverses the groove at constant speed.

The advent of the radio industry in the early 1920's created demand for disc recorders that could be used for "storing" programs for broadcasts (*i.e.*, transcriptions). The need for long-playing records to supply the sound for early movies likewise motivated the turn from the 78-rpm commercial record to the $33\frac{1}{3}$ -rpm transcription record. The slower speed, together with a closer groove spacing and larger disc size, allowed both the motion picture and broadcasting industries to benefit from recording times of up to half an hour. The introduction of the electromagnetically driven cutting stylus, in 1924, had opened the door to really high-fidelity recording, and it was not long before disc recorders of relatively high quality were available to broadcasters, schools—and eavesdroppers.

In recent years, the principal advance in disc recording has been the introduction of the long-playing microgroove record. By means of this, recording times have been at least tripled over the old 78-rpm commercial disc. At the same time, by breaking away from a number of well-entrenched practices, the fidelity was greatly improved.

Table IV summarizes the status of disc recording and compares the various systems. Equipment is readily available for cutting a record of any size at almost any of the listed groove sizes.

TABLE IV. COMPARATIVE TABLE FOR DISC-RECORDING SCHEMES

Type	Turn- table speed (rpm)	Grooves per inch	Record size inches in diameter	Approximate groove depth (inches)	Approximate groove width (inches)	Approximate recording time per disc side	Fidelity	Basic material
Home, school, and broad- cast transcriptions	33 $\frac{1}{3}$ 78	100 to 100	6 $\frac{1}{2}$, 7, 8, 10, 12, 16	.003	.005-.006	2 minutes for small 78; 20 minutes for large 33 $\frac{1}{3}$	Fair to excellent	Wax; acetate on paper or aluminum
Commercial discs, old	78	85 to 100	6, 7, 10, 12	.003	.005-.006	2 to 4.5 min- utes	Fair to good	Shellac, composition sometimes on paper base; vinylite
Commercial discs, micro- groove	33 $\frac{1}{3}$ 45	224 to 300	7, 10, 12	.002	.0018-.0025	20 minutes for large 33 $\frac{1}{3}$ about 5 min- utes maximum for small 45	Good to excellent	Vinylite

In addition to the disc media and systems mentioned above, office-type disc recorders have been introduced (*e.g.*, Sound Scriber), using up to 400 lines per inch on a small vinylite disc.

Tape Recording

Magnetic-tape recording is rapidly replacing disc recording for many purposes. The advantages of the former are its greater length of playing for a given storage size as compared to 78-rpm records, the ease of editing, and the fact that the tape can be reused. Of course, the latter may also be a disadvantage to an eavesdropper, for it means that his tape could be accidentally or deliberately erased.¹⁰

Although the process of magnetic recording was invented in 1895 by the Swedish inventor, Poulson, it never gave disc recording any serious competition in this country until after World War II. This was because until then, the main medium used was steel wire, which not only produced a much poorer quality of recording than discs, but also was much more trouble to manipulate. The Germans, unlike the Americans, did extensive work with magnetic recording in the 1930's, and their "magneto phone" found considerable commercial applications. One improvement they made was to substitute steel tape for wire, solving some of the mechanical problems, and in 1936 magnetic iron oxide on a plastic base tape was introduced as a medium. It was in 1941 that the techniques for properly recording sound on this medium were finally developed.

In World War II the Allies found that the superiority of the Germans' "canned" propaganda broadcasts was due to their use of the improved magnetic-tape recording. Since then, of course, the American sound industry has developed tape recording to the point where it is threatening to displace even the well-entrenched long-playing record.

The near-perfection of the tape-recording art has not completely outmoded wire recording. Particular note must be paid to the pocket-sized, battery-driven, wire recorder (exemplified by the German "Minifon") much used by private investigators. The principal advantage of such equipment is that the use of wire permits a great reduction in size from that of the equivalent tape machine. Of course, the wire is more susceptible to tangling and breaking.

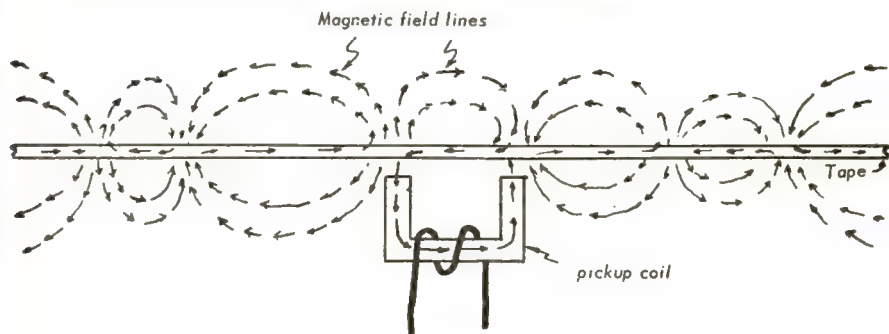


Fig. 17. Magnetic Recording

Magnetic recording, whether tape or wire, utilizes the principle that some materials may be "permanently" magnetized and that such a permanent magnet passing by a coil of wire properly oriented may induce a voltage in that coil. Now, if moving steel wire of, for example, one half to one millimeter in diameter should be magnetized in a way that varies with distance, as shown in Figure 17, to correspond with the frequency and amplitude variations in a sound, then that sound would be magnetically recorded on the wire. On playback, the induced voltage variations should more or less correspond to the original sound.

The disadvantage of the scheme arises from the fact that the magnetization of the wire is not a simple function of the magnetizing force that acts on it; rather, the process

is what is called a highly non-linear one, causing distortion and loss of fidelity. This is overcome by the use of what is termed high-frequency bias. A high-frequency signal between 20,000 and 100,000 cycles per second is superimposed on the sound signal to be recorded. The effect of this is to nullify some of the non-linearities of the medium, resulting in greatly improved fidelity.

The recorded message on the wire can be erased by applying a strong non-varying magnetic field (called d-c erase) which magnetizes the wire everywhere the same amount and destroys the existing variations. Then new variations can be recorded. This fact that the medium can be reused is the one feature which has given magnetic recording an advantage over discs or cylinders. In modern magnetic recording, d-c erasure is not often used, but a high-frequency (h-f erase) alternating current is used instead. The difference fundamentally is that the use of direct current leaves the tape heavily magnetized in a uniform way; the use of high-frequency erase leaves the tape completely demagnetized, which is a more desirable starting point for a new recording.

The speed with which the tape or wire passes the recording and playback heads influences the fidelity of recording greatly. Normal "home" tape recorders, as a rule, have a choice of two speeds: $7\frac{1}{2}$ inches per second for the recording of music, and $3\frac{3}{4}$ inches per second for speech. For extra-long playing time, other recorders are made to use speeds of $1\frac{7}{8}$ and $1\frac{5}{16}$ inches per second; for super-high fidelity, speeds of 15 and 30 inches per second have been used. For police and eavesdropping work, the $3\frac{3}{4}$ -inch and $1\frac{7}{8}$ -inch speeds have been particularly favored. Table V shows the recording times that may be expected from various standard-size tape reels played at various speeds.

TABLE V. COMPARATIVE PLAYING TIMES OF TAPES

Reel size (in di- ameter)	Tape length (feet)	Speed in inches per second					
		$1\frac{1}{16}$	$1\frac{1}{8}$	$3\frac{3}{4}$	$7\frac{1}{2}$	15	30
3	150	30 min.	15 min.	$7\frac{1}{2}$ min.	$3\frac{3}{4}$ min.	3 min.	$1\frac{1}{2}$ min.
4	300	1 hr.	30 min.	15 min.	$7\frac{1}{2}$ min.	$3\frac{3}{4}$ min.	$1\frac{1}{2}$ min.
5	600	2 hr.	1 hr.	30 min.	15 min.	$7\frac{1}{2}$ min.	$3\frac{3}{4}$ min.
5	900	3 hr.	$1\frac{1}{2}$ hr.	45 min.	$22\frac{1}{2}$ min.	$11\frac{1}{4}$ min.	$5\frac{3}{8}$ min.
7	1200	4 hr.	2 hr.	1 hr.	30 min.	15 min.	$7\frac{1}{2}$ min.
7	1800	6 hr.	3 hr.	$1\frac{1}{2}$ hr.	45 min.	$22\frac{1}{2}$ min.	$11\frac{1}{4}$ min.
$10\frac{1}{2}$	2400	8 hr.	4 hr.	2 hr.	1 hr.	30 min.	15 min.
$10\frac{1}{2}$	3600	12 hr.	6 hr.	3 hr.	$1\frac{1}{2}$ hr.	45 min.	$22\frac{1}{2}$ min.
14	4800	16 hr.	8 hr.	4 hr.	2 hr.	1 hr.	30 min.
14	7200	24 hr.	12 hr.	6 hr.	3 hr.	$1\frac{1}{2}$ hr.	45 min.

Available Equipment

There are undoubtedly many eavesdroppers who get satisfactory results using standard inexpensive tape-recording equipment, costing in the neighborhood of \$80. More experienced sound technicians usually prefer to make a more substantial investment, and up to \$500 may easily be spent just on standard tape-recording equipment. The advantage of the higher-priced apparatus is higher-fidelity performance, trouble-free operation, greater reel capacity, and additional speeds beyond the usual $3\frac{3}{4}$ and $7\frac{1}{2}$ inches per second.

A word should be said here about portable recorders. Perhaps the best known of these is the German-built Minifon battery-powered wire recorder, which measures $3\frac{15}{16} \times 6\frac{11}{16} \times 1\frac{1}{16}$ inches. The Minifon uses speeds of $9\frac{1}{2}$ and 14 inches per second instead of the usual speeds. The wire size of 0.002 inches in diameter makes for an extremely compact medium, and the combination of this with the speed yields recording times of two and a half to five hours. The three batteries for the Minifon last ten hours, twenty hours, and 150 hours respectively in continuous service. Because of its usefulness to businessmen, insurance investigators, and entertainers, the Minifon is readily available.

Another portable recorder is the Mohawk Midgetape ma-

chine, which is somewhat comparable in size to the Minifon, but uses tape instead of wire for its recording medium. The price of it with standard accessories is about \$250.

The Midgetape and other commercial recorders are also available fitted to a briefcase. Such a plant could be "accidentally" left on a victim's premises to record what was said for the next several hours.

Disc recorders are somewhat passé with eavesdroppers, but they are available from \$100 up at all large electronics supply houses. Most of these are rather bulky.

Auxiliary equipment for tape recorders, such as voice- or phone-operated turn-on devices, has already been discussed in the section on telephone tapping.

Detectability of a Tape Recorder

The detectability of a tape recorder connected to a telephone line has already been discussed. The mere presence of this device in a room makes it liable to detection by the same means, namely, the presence of the high-frequency bias signal. With an oscilloscope and perhaps an additional amplifier, the room could be "examined" for the presence of a tape recorder. At what distance detection can be accomplished by this means cannot be stated, as it differs widely according to the equipment.

Hidden Minifons cannot be detected in this way because of the use of d-c erase rather than h-f erase. However, the technique of using a mine detector should work well against any concealed recorder.

Filters

One difficulty introduced by the improvement of fidelity in recording is that various interfering noises have been recorded better and better with each improvement. To reduce interference from either low-frequency or high-fre-

quency sources, filters are used. The usual technique is to insert an electrical "band pass" filter somewhere in the circuit between the microphone and the recording element, whether it be a disc-recording stylus or a tape-recording head. It is possible to design such filters to be adjusted for optimum performance (like the familiar dual tone control on high-fidelity music systems).

Filters cannot make a bad noise situation perfect, but they can perhaps make it tolerable. It all depends upon the type of noise that is present. Low-frequency rumbles, such as might occur near heavy traffic or railroad installations, can be reduced effectively. High-frequency squeaks and whistles can also be cut out to a great extent. However, it is impossible to reduce general broad-band noise by means of filters. The use of directional microphones in controlling such noise has already been discussed.

Editing

One question that naturally arises in contemplating the admission of recordings for evidence, or any other purpose, is whether or not they can be faked or edited. That is, can the words be turned around, interchanged, modified, or eliminated to make a recording say something other than that which was originally impressed, and can this be done in such a way as to be undetectable? Harold Lipset, a private investigator of San Francisco, has stated that a recording is much harder to falsify than a photograph, and that sudden changes in background noise as well as unnatural word-emphasis would be sure signs that a recording had been edited. Russell Mason, well-known recording engineer of Los Angeles, has stated to the writer that not only are changes in background noise likely to be detected by ear, but that the cathode-ray oscilloscope can show up any alterations. He also claims that an oscillographic comparison

of the "waveforms" of a speaker's voice and those of an impersonator's will show clearly that an impersonation has taken place.

In spite of such comments, this question must be answered with a cautious "yes." In a carefully controlled experiment, Samuel Dash made a sample political speech on tape. A sound studio specializing in tape editing for one of the large broadcasting studios then took this tape and edited it in such a way as completely to reverse its meaning. Finally, a third recording was made, this time of Mr. Dash reading the new, distorted version of the speech. The three recordings were compared by ear and by oscilloscope to see whether or not the editing was detectable. By ear it was noticeable only in one place where the editor had been hurried in his work. The oscilloscope could not reveal even this much because of the rapidly changing patterns on the screen. It was decided that the only way to examine the waveforms for purposes of comparison was to record them on motion-picture film; accordingly, equipment was set up for doing this. Although it was expected that the build-up or decay of sounds would be altered by cutting, so skilful had been the editorial manipulation that nothing of the kind was observed. Even after hours of studying the films, no sure clue revealing an editing job could be found.

So far as background noise is concerned, it is true that this may be altered by the editing of the speech in such a way as to make detection easy, if particular pains are not taken by the editor to insert new background noise to simulate any cut out. Modern sound studios, however, can simulate just about any noise both in timbre and pitch, so that this is not a real obstacle.

Finally, while it is true that two voices uttering the same sound may differ in the waveforms they produce, it is also

true that by filters, or by voice synthesizers, the waveforms may be made close enough to escape detection.

None of the techniques for making a perfect, undetectable edited or faked tape can be put into practice by the novice. The tape-editing studios have at hand not only very special equipment, but highly trained people with a knowledge of the structure of the sound being recorded. The Bell Telephone Laboratories for years have carried on investigations in the field of voice structure, and developed the aforementioned voice synthesizer.

The standard reference works on sound recording do not describe editing of discs, and indeed one can suppose that if such a procedure is possible, its potential is far less than is the case with the parallel operations on the easily cut and spliced tape (or wire). Editing tape or wire, on the other hand, is a well-known and highly successful art, as has been pointed out. Without it, the television, radio, and recording industries would be much more restricted as to material.

Briefly, the tape to be edited is played on a machine which can be instantaneously stopped at will. When a word or passage occurs which is to be deleted, the machine is stopped, the piece of tape containing the unwanted section is cut out, and the two loose ends are spliced. The words cut out can be inserted in whole or in part somewhere else. Sentences can be rearranged. New words can be dubbed in by an impersonator or made up of sounds taken from other words. One example of this occurred on the tape described above.

The detailed process is not easy. The editor must know the recording well and must also be aware of certain principles regarding sound itself. Every syllable, every pronounced sound, has its own particular combination of frequencies and amplitudes, its waveform, and these waveforms

are given further individual characteristics by the particular voices that speak them. Figure 18 demonstrates such a waveform for the word "farmer." The "f" sound commences

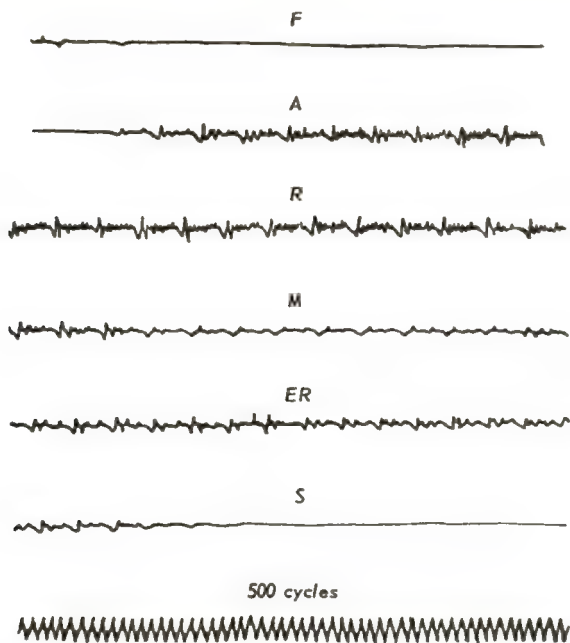


Fig. 18. Waveform of the Word "Farmers"

From H. Fletcher, *Speech and Hearing in Communication*, 2d ed., p. 31. Copyright 1953, D. Van Nostrand Co., Inc., Princeton, New Jersey.

abruptly, due to the sudden build-up of air pressure by the teeth and lips. Each succeeding sound in the word has a pattern of its own, and the final "er" drags out for some time, due to the slow way in which the air is stopped on this particular sound. To use the "er" in another word, such as "her," the editor must be able to find out where the sound starts and stops. He does this by slowly moving

the tape by hand through the pickup head. His equipment gives some indication of amplitude, whether with a meter or with an oscilloscope. By watching this, he can tell when the "er" has decayed to an imperceptible size. To catch the transition from "farm" to "er" he must pass the tape through the pickup head again and again, listening and watching his indicator. Finally, he can tell just where the break must be. In case the "er" in "farmer" has the wrong inflection or pitch, he may have to search the tape several times to get just the right "er" he wants. It might occur in "barber" or "several" or any one of numerous other words. With tape, the editor has the advantage that he can easily make any number of copies he wants of the original and so can, if he wishes, use certain syllables over and over again.

To show how well the editor can exercise his art, Figure 19 presents a tracing from the motion-picture film recording of the waveforms of the edited tape described earlier, together with a similar tracing of the waveforms of the revised speech as directly recorded by Mr. Dash. Differences between the two are attributable to a slight change of voice timbre, but the build-up and decay are just about the same.

This discussion leads to the conclusion that a skilfully edited tape cannot be detected with equipment readily available, but the field would be a fruitful one for further study.

VIDEO DEVICES

Photographic Devices

The modern use of audio devices for obtaining tape recordings of conversations has not eliminated visual spying from the eavesdropper's repertoire. On the contrary, the latter has been brought up to date.

The photographic camera remains, of course, the versatile device it has been for years in the hands of newsmen, pri-

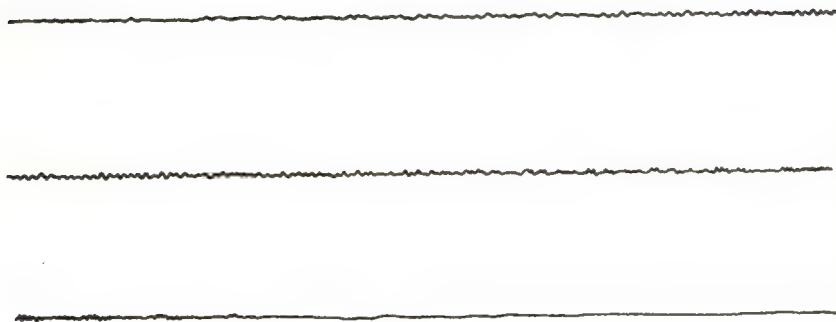
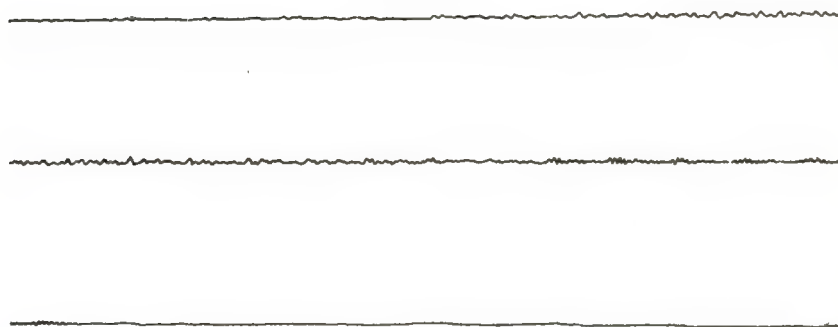
Edited Tape*Recording of Original Text*

Fig. 19. Comparison of Oscillograms of Edited Tape and Tape Recorded from Edited Text

vate investigators, and police. However, the method of its application to the gathering of evidence, legal or illegal, has been altered by the use of faster and faster films, infrared emulsions, and automatic setting and tripping devices. Since this is not a photographic treatise, the first two factors need only be treated briefly.

For the miniature and roll-film type of camera, the speed of film available has been about doubled in the last decade. This has been a boon to private detectives, who must often obtain incriminating pictures under almost impossible lighting conditions.

Regarding infrared photography, slightly more will be said here, because it is likely that the reader will be less familiar with it than with more conventional types of picture-taking.

Infrared film allows pictures to be taken by emanations that are invisible to the human eye. However, this film's sensitivity considerably overlaps the visible spectrum; one should not get the impression that it will only respond to invisible "light." The visible spectrum ranges from 4000 to 7600 angstrom units in wave length (one angstrom unit equals 3.9 billionths of an inch). Radiations from 120 to 4000 angstrom units in wave length are classed as ultraviolet; from 8000 to 4,000,000 angstrom units, they are infrared. Infrared film is sensitive from the ultraviolet region to about 5000 angstroms; there is a gap of insensitivity from 5500 to 6200; then from 6500 to 8500 it is again sensitive. Hence the region of sensitivity in the area where the eye does not respond is not large.

In using it, one needs to increase the period of exposure from two to eight times that of normal film, depending upon the source of infrared light. Since in surveillance infrared photography will be done in total or near darkness, one is quite limited as to the types of sources available.

The tungsten filament lamp is a good source. To make it invisible or nearly so, it is necessary to use an optical filter. Also much used, particularly in this type of work, is the infrared flash. A person photographed by the latter means is aware of something happening, particularly if he is looking toward the flashbulb, but since darkness both precedes and follows the flash, he is not quite sure what it was that took place.

The third development that makes photography a more powerful eavesdropping tool than it previously was is the automatism and remote control of the camera itself. Particularly since World War II, there have been cameras available that have automatic film re-wind and even electrical control of lens and shutter adjustments. Triggering cameras remotely presents no special problem, whether it is done mechanically, electro-mechanically, or electronically.

In the first case, the old technique of a trip wire can be used. A better way is to have the desired motion complete or break some electrical circuit, causing a solenoid to trip the shutter. The final case may involve the use of any one of a number of electronic detection devices.

For example, the triggering solenoid could be set off by the subject's breaking a light beam such as is used on door-opening schemes. A refinement of this method for avoiding detection could use either an infrared or an ultraviolet beam.

A second commonly used electronic detection scheme makes use of a so-called "capacity switch." Here, the proximity of a large, electrically conductive mass, such as the human body, changes the capacitance of a radio-frequency circuit in such a way that it results in a change of output voltage. This, after amplification, can be used to operate the triggering solenoid.

The choice of scheme to be applied depends upon the

problem. Other, more complicated, electronic detection schemes could be devised, but the two mentioned are the ones most commonly employed, and the components for them are available, ready to use. Careful installation should result in a photographic system that is absolutely unnoticeable.

The automatic lens adjustment is accomplished by having a dual optical system, one activating a photocell whose output then sets in action a "servomechanism" which adjusts the lens opening for any pre-set shutter speed. Movie cameras of this type are exemplified by the Bell and Howell Model 200EE, and there are equivalent models of still cameras.

Closed-Circuit Television

While photographic techniques have their sphere of application, it sometimes becomes desirable to have a continuous surveillance system in operation. Such a system is closed-circuit television. It may be useful, first, to present some of the principles upon which closed-circuit television is based and then to discuss the practical details.

A photoelectric cell or tube responds to light; an electrical output means there is light; no electrical output means there is no light. Of course, the output goes up or down as the illumination does, but these few words just about circumscribe what the photocell can do. It cannot respond to a composite optical image of some object and by its output indicate that object's detail, because everything one sees has graduations of high reflected light and sections of low reflected light. The photocell could only yield an electrical output which would indicate the average intensity of the reflected light striking it from the object.

To register the fine detail, as in television, the photocell must "look" at only a tiny speck of the image at once, a

speck so small that the brightness of it is nearly constant, and it must repeat this process millions of times a second for different, but sequential, "dots" of the picture. This process is called "scanning."

Each time the photocell looks at an element of the pic-

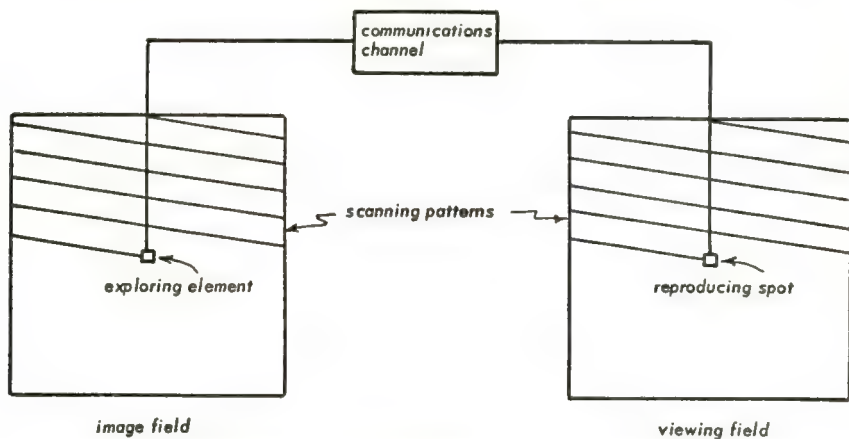


Fig. 20. Functional Representation of a Television System

Adapted from V. K. Zworykin and G. A. Morton, *Television*, 2d ed., p. 175. Copyright 1954, John Wiley & Sons, Inc., New York.

ture, it sends out an impulse which travels through the system, whether it be by wireless wave or by wires, to a kinescope which reproduces that element in a visual form. Of course, the complexity of television is, in a large measure, due to the fact that the original and reproduced picture elements must be in comparable positions, *i.e.*, the scanning and reproduction must be synchronized. Figure 20 is a functional representation of this process.

The picture is divided into 525 lines, of which all but about 7 per cent are "active"—that is, actively contribute to the formation of the picture—and each line contains 600

elements. If the process of reproducing the dots took too long, the picture would change drastically before one was half through. The whole picture must be scanned and reproduced very rapidly, and actually the standard is thirty frames (complete pictures) a second.

The communication channel in the usual television system is a modulated radio wave. In closed-circuit television, also called industrial television, it is a cable connecting pickup camera and viewing equipment. Since no external radiation is used, industrial television does not come under FCC or industry rules and regulations; any number of lines, elements, frames, band widths can be used; however, most present-day systems conform to the regular standards, unless especially designed to fill very demanding requirements.

For a closed-circuit television system, Zworykin and Morton¹¹ give the following as desirable characteristics:

- Low overall cost of the television chain
- Simplicity of adjustment
- Durability of components
- High sensitivity
- High resolution
- Light weight and small bulk of camera
- Remote camera control
- Overall portability
- Standards permitting addition of commercial receiver to chain

In most modern industrial systems the camera uses the "vidicon" pickup tube. This is a so-called photo-conductive tube, rather than the photo-emissive type used more in regular television work. Its advantages for this application are compactness and good performance over a wide range of illumination.

Aside from the common use of the pickup tube, the systems differ somewhat. In some, the camera and monitor are each self-contained and the signal cable of up to five hun-

dred feet is the only connection. An example is the Hallamore Closed Circuit Television System.

At the other extreme are systems that make use of a television home receiver which not only supplies all the voltages and signals that the camera needs, but also serves as the monitor. The RCA-TV Eye is an example, and the Dage Television Camera is somewhat similar.

Although the main applications of industrial television seem to have been, as the name suggests, in industry, nevertheless a large share of these fall into the realm of this report, for plant security personnel are finding all sorts of surveillance situations where a concealed "eye" is demanded. The situation is reminiscent of Orwell's ominous phrase, "Big Brother is watching."

Industrial television systems are readily available, but they are not the sort of thing one goes down to the local electronics store and picks up. The Hallamore system costs \$3750 with a remote camera, and other systems are comparable in price. Due to the cost, it is unlikely that many eavesdroppers other than industrial security personnel would be using television surveillance. Consequently, there is no need to discuss the systems' detectability here.

MISCELLANEOUS SURVEILLANCE AND INTELLIGENCE DEVICES

Metal Detectors

Although in one sense the subject of metal detectors seems to be a long way from that of eavesdropping, nevertheless, it is appropriate for discussion here, because the use of metal detectors for personal search appears to be an invasion of body privacy.

Metal detectors were developed for finding mines in wartime. The early types consisted of an electrical circuit in

one arm of which was a search coil. The circuit in normal operation was "balanced." Bringing metal into the field of the search coil caused a reaction from the induced currents in that metal back on the circuit, causing it to be unbalanced and resulting in a tone heard in earphones.

Metal detectors soon were used in industry for sorting objects on assembly lines, bottle inspections, and so on. Other types were developed using higher frequencies, capacity switches, and other more elaborate systems. It was only natural that they should be applied to plant security, especially in firms plagued by pilfering. They can be mounted in concealed locations at an entrance or exit and can detect the presence of even a single coin in a pocket.

Automatic Car Tails

A small, continuously operating transmitter can be placed on an automobile under surveillance, perhaps beneath a fender. Its signal is picked up by a receiver in another car or in a fixed plant. The use of two or more fixed plants would allow well-known triangulation techniques to be applied.

In another model, a transmitter with a range of about four city blocks is used, and provision is made for picking up conversations in the car, indicating stop, starts, and the approximate speed.

Very little information is available on the specifications of these sets, but they seem to present no new features that make them unique.

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Part Three



EAVESDROPPING: THE LAW

WIRETAPPING

Introduction

Wiretapping is a specialized form of eavesdropping. Although eavesdropping was a crime in Blackstone's time¹ and still lingers on as such in some jurisdictions, the law of wiretapping owes little, if anything, to this source. As a consequence, a report upon the law may justifiably treat the two separately, as is done herein.

The basic problem in the law of wiretapping is whether law-enforcement officers and/or private individuals should be allowed to tap. If tapping is defined only as interception by a person without the consent of either of the parties to the conversation, both the federal statute and a majority of the state statutes preclude tapping by private individuals. Differences develop insofar as the definition is broadened to include instances wherein the interceptor has consent of either one of the parties to the conversation. The real controversy, however, develops over whether law-enforcement officers should be allowed to tap even though private individuals may not.

Where law-enforcement officers are not permitted to tap, the next question deals with whether evidence obtained by them in derogation of the prohibition is admissible. Other problems involve the state-federal relationship and what, if any, auxiliary enforcement provisions should be established.

THE FEDERAL LAW

Wiretapping and the Fourth Amendment

It was appropriate that the first authoritative pronouncement by the United States Supreme Court upon wiretapping should involve enforcement of the prohibition laws. For one reason, the emergence of organized crime during the prohibition era provided the stimulus for extensive use of tapping.² Also, prohibition was an equally controversial subject, and led to the same problems of enforcement, with concomitant judicial vacillation, as have arisen regarding tapping.

In *Olmstead v. United States*, decided in 1928,³ the defendant had been convicted of a conspiracy to violate the National Prohibition Act. The evidence against him consisted of the testimony of federal agents who had monitored defendant's phone calls by means of several taps. The Court of Appeals affirmed the conviction,⁴ and the Supreme Court certified the question of whether the introduction of the evidence violated the defendant's rights under the fourth and fifth amendments. Although certiorari was so limited, the majority opinion and two of the three dissents considered the effect of the Washington statute which prohibited tapping and the moral question involved in the government's gaining advantage by engaging in a "dirty business."

Chief Justice Taft's majority opinion summarily dismissed the fifth amendment by stating that whether it was violated depends upon whether the fourth was violated. In deciding that the introduction of the evidence was not violative of the latter amendment, the opinion relies upon the facts that there was no trespass, that the defendant intended his voice to leave the confines of his room, and that neither the defendant's person nor tangible property was seized. An anal-

ysis of these reasons demonstrates that all considerations may not be involved in a given case. For instance, it is conceivable that a given tap might involve a trespass, but it is difficult to imagine that the other considerations will not be present in every wiretap case. However, in an electronic eavesdropping case, there may be a trespass and there may be no intent on the speaker's part to have his voice go beyond the confines of the room, but there would be no seizure of person or tangible property. The combination of factors and the relative weight to be given each were left to future decision.

The Chief Justice had some interesting statements to make concerning the non-constitutional problems in the case. Upon these issues it was said that the exclusionary rule was limited to cases in which the evidence was obtained in violation of constitutional provisions. Further, it was said that while Congress could make the evidence inadmissible, it must do so by "direct legislation."

Justice Holmes, while concurring in Justice Brandeis's dissent, wrote a separate opinion dissenting upon the moral grounds. Justice Brandeis took issue with the majority upon all three points, while Justice Butler, believing that the limited grant of certiorari precluded a ruling upon all but the constitutional question, dissented upon that ground.

The *Olmstead* case, therefore, was effective in establishing legislative control over wiretapping. It not only established the freedom from constitutional limitation, but also forced the enactment of legislative control, if there was to be any, by judicial abdication. Congressional response was not slow in coming.

The Statute

The year after the *Olmstead* decision a bill was introduced which made wiretap evidence inadmissible. The bill

failed to become law, but the head of the FBI, the attorney general, and other administrators went on record in congressional hearings as being opposed to wiretapping.

In 1932, bills which would have made such evidence inadmissible and also would have forbidden wiretapping by federal employees were introduced, but they failed of passage. However, in 1933, wiretapping in the enforcement of the National Prohibition Act was forbidden.⁵

In 1934, Congress passed the Federal Communications Act. It purported to re-enact the Radio Act of 1927, to make it applicable to wire communication, and to transfer control to a new agency. The bill's managers stated that it did not, as a whole, change existing law.⁶ However, this act contained Section 605, which is the basic section in the federal law and merits reproduction in full.⁷

§ 605. *Unauthorized Publication or Use of Communications*

No person receiving or assisting in receiving, or transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, to any person other than the addressee, his agent or attorney, or to a person employed or authorized to forward such communication to its destination, or to proper accounting or distributing officers of the various, communicating centers over which the communication may be passed, or to the master of a ship under whom he is serving, or in response to a subpoena issued by a court of competent jurisdiction, or on demand of other lawful authority; and no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect or meaning of such intercepted communication to any person; and no person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein con-

tained for his own benefit or the benefit of another not being entitled thereto; and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect or the meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto: *Provided*, That this section shall not apply to receiving, divulging, publishing or utilizing the contents of any radio communication broadcast or transmitted by amateurs or others for the use of the general public, or relating to ships in distress.

In addition, Section 501 of the act imposes a fine or imprisonment or both for wilful and knowing violation of its provisions.⁸

The statute is clearly divisible into four independent clauses, the second and fourth of which deal with wiretapping. To go into effect the prohibition of the second clause requires that two things be done: first, the message must be intercepted, and second, it must be divulged or published. The fourth clause is broader in that it also covers people who have become acquainted with the message with knowledge of the interception, and prohibits their use of such information.

Scope of Section 605

Intrastate Calls. The statute prohibits interception and divulgence of *intrastate* calls as well as *interstate* calls.⁹ The omission of the express limitation to interstate and foreign communications in the second clause and its inclusion in the first and third clauses strongly indicate that the second clause is not so limited. Still further, since the same tele-

phone line carries both interstate and intrastate calls, a tapper cannot tap one without also tapping the other.

Interception and Consent. In *Goldman v. United States*¹⁰ federal agents had installed in the wall of the defendant's room a detectaphone, which was able to pick up all defendant's conversation in that room. Some of the statements were made by the defendant during telephone conversations, and it was held that overhearing these statements did not constitute an interception. Justice Roberts stated that the statute was designed to protect a system of communications, and, therefore, the taking must be from the system.

It should be noted that, under the facts of the Goldman case, the eavesdropper did not overhear both sides of the telephone conversation. In this regard, he was in a position with relation to the telephone call no different from that of any individual who is present while another is speaking on the telephone. Also, the agent overheard the defendant's conversations with others who were present in defendant's room, as well as defendant's statements over the telephone. Thus it would seem that the fact that some remarks were made over the telephone was mere happenstance.

A more complicated question arises when one of the parties to the conversation has given permission to a third person to attach a recorder to his phone,¹¹ or to listen in on any extension,¹² or to listen while the receiver is held in such a way as to allow both to hear.¹³ These cases clearly raise both the question of interception and that of consent. Frequently, these cases involve the use of an informer who agrees to make the call while the police listen.

Courts of appeals and district courts have split upon these issues.¹⁴ Although the cases could be distinguished, perhaps, upon the question of interception, the distinction, when applied to the voice coming over the wire from the non-

consenting partner, must necessarily be geographical only, since no interception in this manner precludes the intended recipient from hearing the message at virtually the same time as the interceptor.¹⁵ Therefore, aside from the geographical aspect—i.e., attachment to the wire before it enters the receiver, which seems to have little or no relationship to any discernible policy—the question really seems to be whether one party to the call can, or should, be allowed to give his consent. To hold that a person can't record or allow a third person to listen to his own calls may interfere with what today has been declared to be both a necessary and a widely used business practice.¹⁶ In addition, it may be important to note that the non-consenting party to the call is bound at his peril to evaluate the reliability of the other party, since the recipient could testify personally as to what was said.¹⁷ Finally, a relevant policy consideration would appear to be that allowing such activity would not lead to indiscriminate tapping, nor would it be likely to lead to putting a tap on a phone for a protracted period of time during which all calls would be monitored whether they were relevant or not. In spite of these policy considerations, the obvious inadequacy of the statutory phrase "without the consent of the sender," and the fact that the more important evidence under the circumstances consists of the statements of the non-consenting party, courts allowing the practice have relied upon the word "interception" in arriving at their conclusion.¹⁸

These problems are at least partially answered by the United States Supreme Court in the recent case of *Rathbun v. United States*.¹⁹ Rathbun was charged with making a threatening statement for the purpose of extortion, in an interstate communication. Sparks, the victim, had permitted federal agents to listen to the telephone communication by means of a regularly installed extension, and these agents

testified as to the threat that was made. The trial court admitted the evidence, and its action was sustained by both the Court of Appeals and the United States Supreme Court.

The Supreme Court, of course, clearly held that the conduct of the federal agents did not come within the prohibition of Section 605. However, the question remains as to whether the case is limited to overhearings by means of regularly installed extensions. The majority opinion appears to place emphasis upon the fact that such extensions are widely used and are important to modern business practices. However, emphasis is also placed upon the fact that Sparks, the victim, could have recorded the conversation and used it for his own purposes.²⁰

These two factors would appear to lead to differing conclusions concerning the scope to be accorded the decision. From the point of view of the parties, however, it would appear to make little difference whether the extension was installed for the purpose of overhearing a particular call or whether it was regularly utilized for other calls as well. As regards the non-consenting party, he is aware of the widespread use of extension phones and must determine what he can safely say in the light of those possibilities. Similarly, since the consenting party may record the conversation, his right to allow a third person to listen in would not seem to be affected by the method utilized. However the disclosure is made, the non-consenting party makes the call in the light of the knowledge that the disclosure may be made, and he, therefore, must make the statement, or not, dependent upon his evaluation of the recipient.

The New Jersey Supreme Court has read the *Rathbun* case in an even broader way. The court recognized that, if the proffered testimony violated Section 605, the testimony would constitute a federal offense. However, relying upon *Rathbun*, it held that the testimony of a company

switchboard operator who had listened to calls on company phones by the defendants, who were charged with defrauding that company, did not violate the statute. Absent some theory of implied consent from the use of the company phone, *Rathbun* is clearly inapplicable. Actually, of course, a finding of consent would be fictitious. The case confuses parties with subscribers.²¹

Another type of case has arisen in Washington, D. C. In *United States v. Lewis*,²² affirmed under the name of *Billeci v. United States*,²³ the police, in enforcing the lottery laws, had answered the phone during raids and, without disclosing their identities, carried on conversations. The police officers then testified as to the content of the calls during the trial of intended recipients of those calls. Judge Holtzhoff's opinion relied upon the fact that there was no interception, and this view was affirmed by the Court of Appeals. That court, however, indicated that it reserved opinion upon what would have been the result had the police affirmatively misled the callers by false identification.²⁴

Law-Enforcement Tapping. The first case arising under Section 605 dealt with the words "no person." In *Nardone v. United States*,²⁵ the government argued that federal agents could intercept calls by the defendant and testify as to the contents of those calls, because the government was not within the terms of the act. This argument was rejected by the United States Supreme Court.

This limitation upon tapping by federal officers was seriously undermined, however, by later developments. Mr. Hoover, the Director of the FBI, has written that in May, 1940, President Roosevelt "authorized the attorney general to approve wiretapping when necessary involving the defense of the nation."²⁶ Attorney General Jackson, writing ten days later to the Judiciary Committee, did not mention

the purported authorization, but rather reiterated his view that lawful wiretapping required legislative amendment.²⁷ However, in a letter to the same committee in March, 1941, Attorney General Jackson indicated that tapping and use of the information did not violate the statute absent a divulgence.²⁸ This interpretation of the statute appears to ignore the fourth clause of Section 605.

Attorney General Biddle, in October, 1941, extended the right to tap of the FBI by stating that divulgence by an agent to his superior did not come within Section 605.²⁹ This metaphysical concept of the individualization of an entire organization made it possible for the government to tap subject only to the restrictions that the contents of the communication could not be used in evidence nor could derivative evidence be used, assuming that it became possible to ascertain its nature.

Subsequent attorney generals have acquiesced in this interpretation, and it is now claimed that congressional acquiescence therein has made it an accepted interpretation subject to change solely by legislative enactment.³⁰

A second question is whether Section 605 prevents law-enforcement officers of the states from tapping for such purposes. The federal statute prohibits interception and divulgence of both interstate and intrastate calls,³¹ and it does not expressly exclude state officers from its prohibition. In addition, Justice Minton, writing for the majority in *Schwartz v. Texas*, made the flat statement that such testimony by a state officer in a state trial was a federal crime.³² In spite of this, however, several states established procedures purporting to authorize tapping by state law-enforcement officers.³³

The issue was finally resolved in the recent case of *Benanti v. United States*.³⁴ In that case the United States Supreme Court unanimously held that an interception and

divulgence by a New York law-enforcement officer was a federal crime in spite of the order by a New York court. The effect of the decision appears to be that the New York Constitution and statutes establishing a court order system of law-enforcement tapping are in conflict with the congressional enactment and are, therefore, invalid.⁸⁵ Consequently, Section 605 appears to operate to prevent state law-enforcement tapping at least to the same extent that it prevents federal officers from engaging in such activity.⁸⁶

Enforcement of the limitation against state officers is not, however, a foregone conclusion. In the twenty years of this New York system, the federal government has not prosecuted a single state law-enforcement officer for tapping, and there is little reason to believe such prosecutions will be forthcoming now. Since, as discussed hereinafter, the state may admit evidence obtained by tapping, the only remaining effective enforcement lies in the fact that state judges may not issue wiretap orders in the future.

The effect of the *Benanti* decision has elicited mixed opinions from the legal authorities of New York. Attorney General Lefkowitz has stated that it is his duty to defend the statute until a court of competent jurisdiction declares it unconstitutional.⁸⁷ On the other hand, three lower court opinions have ruled that the *Benanti* case did make the statute unconstitutional.⁸⁸ In spite of this judicial opinion, it would seem that until the situation is clarified by a more authoritative court, orders for wiretapping will still be issued by courts sympathetic to police tapping.

Consequence of a Violation

The Exclusionary Rule. The Supreme Court ruled in *Nardone v. United States*⁸⁹ that federal agents could not testify to conversations which they had intercepted. The fact that the federal government claimed sovereign immunity and

was turned down upon that claim has been discussed above.

There was also an impressive legislative history purporting to show that the statute did not mean to establish an evidentiary rule.⁴⁰ However, Justice Roberts relied upon the plain meaning of the words of the statute. The key word in this particular is, of course, "divulge." The testimony is clearly a divulgence and hence brings the section into play. The statute in this sense can be thought of as the "direct legislation" required by Chief Justice Taft in the *Olmstead* case.⁴¹ Although not mentioned by Justice Roberts, it is apparent that a different conclusion would have resulted in the anomalous situation of a federal crime being committed in a federal courtroom. This differentiates the situation from the normal search and seizure case wherein the prohibited social harm is irremediably final before the trial. In such a situation, the only consideration which leads to exclusion is the desire to destroy the incentive of law-enforcement officers to commit violations in the future.⁴² It is significant, perhaps, that Justice Roberts did not mention the unreasonable search and seizure cases.

The second *Nardone* case⁴³ raised a different type of question. In that case, it was claimed that the evidence used against the defendants was discovered through leads obtained by wiretapping. As a result, there was no divulgence in the courtroom, nor is it likely either that the use in the trial of the derivative evidence is the "use" condemned by the fourth clause of Section 605, or that the existence of the communication was necessarily brought out at the trial.⁴⁴ However, it is clear that at some time in the past the "use" part of the statute was violated.

The United States Supreme Court held that evidence obtained in this manner by federal officers was inadmissible. In this situation the Court used an analogy to search and seizure. It seems apparent that such use was intended as a

means of limiting official transgression in the future. The opinion, however, did not set out the consideration which led to the introduction of the analogy nor did it give even a passing nod to Chief Justice Taft's statement that the exclusionary rule would be applied only to constitutional violations. It is important to notice that the analogy, while applicable here, is not necessarily appropriate in many wiretap problems, and that in this case it was used to broaden the effect of the statute. Yet, a failure to state precisely the considerations which led to the analogy permitted courts less inclined toward extending the statute against wiretaps to apply the limiting aspects of the search and seizure rule in instances when its applicability was more questionable.

A limiting feature of the analogy was demonstrated in *Goldstein v. United States*.⁴⁵ Two accomplices of the defendant had been confronted with recordings of their calls which had implicated the defendant. As a result, the accomplices testified over the defendant's objection. The United States Supreme Court, on a basis of the analogy, held that since the defendant had not been a party to the call, he had no standing to object.

The Goldstein case appears to be limited by the opinion in *Benanti v. United States*.⁴⁶ The cases differ in that a federal crime was committed in the federal trial in *Benanti*, and this was probably not true in *Goldstein*. Also, in *Benanti* the problem revolved around the identity of the tapper, and in *Goldstein* it related to the identity of the participants in the intercepted call.

However, the Benanti case rejects the analogy to search and seizure relied upon by the Court of Appeals.⁴⁷ Emphasis is placed upon the fact that the conviction of Benanti is a conviction brought about by the commission of a federal crime and, as such, cannot stand. If this reasoning is applied to a case wherein there is a criminal divul-

gence of an intercepted communication between two conspirators in the trial of a third, the conviction of the third would be brought about by the crime committed during the trial, and could not, therefore, be upheld. Still further, if the conviction were actually brought about by the criminal use of an intercepted communication before the trial,⁴⁸ as in the Goldstein case, the conviction would appear to be equally untenable.⁴⁹

The question of the effect of Section 605 upon the evidentiary rules of state courts remains. Since many states either have in the past allowed law-enforcement officials to tap under state law or do not follow the exclusionary rule, the question of whether a state officer could testify as to an intercepted communication in a state proceedings arose early in the history of the statute. In the first case brought before the United States Supreme Court, that Court affirmed a New York Court of Appeals decision holding the evidence to be admissible.⁵⁰ The decision, a four-to-four decision without opinion, did little to resolve the dispute. State courts allowed the evidence whenever the question of the federal statute was raised.

Finally, in *Schwartz v. Texas*,⁵¹ the United States Supreme Court faced the issue and decided it in a more authoritative manner. In the opinion, Justice Minton made the categorical statement that such testimony constituted a federal crime.⁵² Nonetheless, he went on to say that the congressional intent had to be more clearly demonstrated before it would be held to infringe so drastically upon normal state prerogatives.

The opinion in *Benanti v. United States*⁵³ distinguishes *Schwartz v. Texas*.⁵⁴ If the Schwartz case remains valid, the situation would appear to be that the state may continue to utilize evidence obtained by tapping, and if, by virtue of that evidence, a state conviction is obtained, it may not

be attacked in a federal court. However, a state may not affirmatively authorize an interception in advance.

This is an anomalous result. The situation might appear to be analogous to that regarding unreasonable search and seizure.⁵⁵ However, in such cases the question is whether a state must apply an auxiliary rule of evidence to control police behavior in the future. In those cases, the unreasonable search and seizure is complete before trial, whereas in wiretap cases, at least when there is a disclosure at trial, the problem relates to the commission of a federal crime at that time. As a consequence, the trial judge in a state holding such testimony to be admissible is faced with the unsavory alternative of allowing a federal crime in his court or of not following the state's rule of evidence.

A final problem concerning evidence arose in the case of *Gris v. United States*.⁵⁶ Gris, a private detective in New York, was charged with violating Section 605. At the trial in which he was convicted, the calls he intercepted were admitted into evidence. The defendant's contention that this violated Section 605 was denied by the Court of Appeals. Judge Medina's opinion indicates that a holding for the defendant would make the statute self-emasculating,⁵⁷ and he supports the denial by saying that Section 605 does not enact a rule of evidence and that, besides, the defendant has no standing to object. Both grounds seem dubious. Certainly insofar as the problem involves a criminal disclosure during the federal trial, the first *Nardone* treats Section 605 as evidentiary in nature.⁵⁸ Although the statute is not couched in evidentiary terms, it is difficult to believe that it was intended that federal crimes should be committed in federal courts. This basis for the decision represents the continued confusion between Section 605 and the exclusionary rule concerning unreasonable search and seizure.⁵⁹ It is noteworthy that in respect to this, the Court of Appeals cites

its own opinion in *United States v. Benanti*,⁶⁰ which was reversed by the United States Supreme Court.⁶¹

The claim of lack of standing to object is based upon *Goldstein v. United States*.⁶² The effect of the Supreme Court opinion in the Benanti case in this regard has been discussed above.

Determination of Admissibility. The ruling that the evidence obtained by virtue of a tap was inadmissible raised a number of practical problems. In relation to these problems there have developed numerous rules of practice of varying degrees of acceptance.

It is generally accepted that the burden of showing that there was a tap is upon the defendant.⁶³ Clearly, if the affidavits supporting the motion to suppress the evidence are too general or too speculative, and if the government files an affidavit detailing the nature of the evidence it intends to use and denying that it is derived from a tap, the judge is not required to grant a hearing upon the motion.⁶⁴

It is more questionable which party has the burden of showing the relationship, or the lack of it, of the tap to the evidence. Justice Frankfurter in the second Nardone case, at one place stated that the accused must be given the opportunity to prove "that a substantial portion of the proof against him was a fruit of the poisonous tree," and at another, that the government would have the opportunity "to convince the trial court that its proof had an independent origin."⁶⁵ The Court of Appeals of the Second Circuit has twice held that, once the tap is shown, the government has the burden of showing the lack of relationship.⁶⁶ The holdings were based in part upon the latter statement by Justice Frankfurter—but principally upon the fact that the government has the requisite information to sustain the burden. The opinion also utilized an analogy to the civil rule that

a wrongdoer who has commingled the fruits of his wrongdoing and other goods has the burden of showing which are not the result of his wrong.⁶⁷

If the burden is upon the prosecution, at least, the government must make a full disclosure of the contents of the communications it has obtained by the taps. In *United States v. Coplon*, the trial judge had, on grounds of national security, refused to allow the defendant to see certain records. He had examined them himself and had arrived at the conclusion that they did not furnish the leads for any of the evidence to be used.⁶⁸ The Court of Appeals reversed by holding that the government had the alternatives of disclosure or non-prosecution.⁶⁹

The government, assuming it has the burden, need only show that it had the same information from a legitimate source as well as from the tap. The *Coplon* case once again demonstrates the rule. In that case much of the testimony was by eyewitnesses to the defendant's meeting with Gubitchev in New York. Information that the two were to meet there had been obtained by taps, but it had also become known to the government through the defendant's fellow employees and her superior officer as well.⁷⁰

Due to the lengthy delay a hearing upon the source of the evidence may necessitate⁷¹ during the trial, the issue is usually raised by a pretrial motion to suppress the evidence.⁷² However, if a defendant has no knowledge prior to the attempted introduction of the questioned evidence, he may raise the issue by an objection during the trial. Similarly, the question may be raised during trial if his previous motion has been denied.⁷³ Although a new trial was not granted, the Washington, D. C., District Court seemed to assume that the question could be raised by such a motion where the movant was previously unaware of the tapping.⁷⁴ However, the issue may not be raised for

the first time on a motion to vacate a sentence and conviction.⁷⁵

Criminal Prosecutions. The violation of Section 605 is punishable under Section 501 by either a fine or imprisonment. However, prosecutions for the violations have been few. The first involved an interception of calls between members of the SEC, which probably accounts for its being brought.⁷⁶ Testifying before a congressional committee over twenty-one years after enactment of the statute, government officials stated that there had been only three prosecutions including the one mentioned above.⁷⁷ Since this testimony there have been a number of prosecutions.⁷⁸

It was, no doubt, this lack of enforcement which led to the strange situation wherein taps which were legal under state law were treated as being legal in spite of their obvious violation of Section 605. As a consequence, the country was treated to the spectacle of state legislatures enacting court order systems for law-enforcement tapping, of judges busily issuing such orders, and of congressional committees playing recordings of intercepted communications made under such court orders. This was true even in private tapping when private detectives wrote magazine articles detailing the taps they installed, which could not be justified under Section 605 but were legal under the state law. They always claimed, apparently in good faith, that they installed nothing but legal taps.

Other Consequences. Intercepting and divulging is a federal crime and may preclude the use of certain evidence as indicated above. In addition, its consequences may take a number of other forms, depending upon attendant circumstances. For instance, a tap upon the defendant's wire may lead to the overhearing of his talks with his attorney and thereby impair his constitutional right to effective coun-

sel.⁷⁹ Another consequence is that if a warrant is based upon wiretap information, it will be quashed and evidence seized thereunder will be suppressed.⁸⁰

Since many states have utilized their power to allow a state officer to testify in state prosecutions regarding communications received by forbidden interceptions, defendants have attempted to obtain federal injunctions against such testimony.⁸¹

Jurisdiction in the federal courts for such actions is sought under two different theories. One section of the jurisdictional statute gives jurisdiction when a federal statute is brought into question and the amount in controversy is over \$3000. Judge Chestnut, in the leading case of *McGuire v. Amrein*, held that it was impossible to assign a pecuniary value to such a suit, so that jurisdiction upon these grounds was impossible.⁸²

A second grounds for jurisdiction was sought in the so-called civil rights section, which requires a violation of a constitutional right or a violation of a statute "providing for equal rights of citizens." Since wrongful interception violates no constitutional right, reliance must be placed upon the latter provision. Judge Chestnut read this particular provision in its historical context and held that Section 605 was not such a statute.

More significant in view of later developments, Judge Chestnut held that, assuming jurisdiction, he would not issue the injunction at any event. This holding was based in part upon the fact that an injunction is an extraordinary equitable remedy which usually deals with property rights. In addition, he relied upon the fact that a criminal prosecution will not normally be enjoined, particularly when it is a state prosecution, and equity will not usually enjoin the commission of a crime.

These reasons were relied upon by the United States Su-

preme Court in *Stefanelli v. Minard*,⁸³ when it held that a federal court should not enjoin the use of evidence in a state prosecution, even though it was obtained by a state officer by an unreasonable search and seizure. In this case, the opinion in *McGuire v. Amrein*⁸⁴ was cited with approval. The Court of Appeals of the Third Circuit has held that the *Stefanelli* case could not be distinguished from a suit to enjoin state officers from testifying to intercepted communications in state proceedings.⁸⁵

The most recent case in which an injunction was sought in a federal court is *Burack v. Liquor Authority of New York*, and the injunction was granted.⁸⁶ The opinion does not mention the problems discussed in the preceding paragraphs. Instead, the injunction is granted because the New York statute is believed to be abrogated by *United States v. Benanti*.⁸⁷

An important decision, though involved with illegal searches and seizures, suggests a distinction of possible utility since, as indicated above, federal officers do, in fact, tap. In *United States v. Rea*,⁸⁸ the federal agents had conducted a search under an invalid warrant and obtained evidence of a state crime. The defendant in the criminal action sought to enjoin the use of the evidence and the testimony of the federal agents in the state proceedings. The United States Supreme Court, relying upon its power to police the lower federal courts, held that the injunction should issue. Of course, in a wiretap case the commissioner will not be involved, since no warrant is issued, but in relation to federal prosecutions, the Supreme Court has exercised its power to police federal agents concerning both illegal searches and seizures⁸⁹ and confessions.⁹⁰ Consequently, it is not unlikely that an injunction would be issued to prevent a federal officer from testifying in a state proceeding as to intercepted communications. It is not nec-

essarily likely that the Rea case will lead to an overruling of the Stefanelli case, even though the majority opinion did undermine some of the reasoning in the latter by pointing out that that action enjoined only the use of certain evidence, rather than the state prosecution as such.

Another possible consequence of a violation of Section 605 is that it might give rise to a cause of action for damages by the party whose communications were tapped. In *Reitmeister v. Reitmeister*,⁹¹ Judge Learned Hand stated that he felt the normal tort rule applied so that a person within the class for which protection is sought would have a civil cause of action. Although the dismissal of the suit was affirmed upon other grounds, the other two judges upon the Court of Appeals appeared to assume the correctness of Judge Hand's view in this particular.

Attempts at Amendment

Congressional response to the Nardone case followed rapidly. In 1938, a bill to allow tapping by government agents passed both houses of Congress but failed to become law because of differences between the versions approved by each house.⁹²

In 1941, two bills were introduced, and the differences between them demonstrated at least two of the basic questions which have continued to come up in the proposed statutes and hearings since then. The Hobbs Bill allowed tapping for any federal felony upon authorization by the administrative head of the executive department, while the Walters Bill limited it to felonies related to the national defense and then only upon the permit of a federal district judge or United States Commissioner.⁹³

In the wake of the Supreme Court opinion in *Benanti v. United States*, a bill has been introduced into Congress to exclude state law-enforcement officers from the operation

of Section 605 under certain conditions. The pertinent portion of the bill reads as follows:

Provided, That this section shall not apply to . . . (B) the interception by any law enforcement officer or agency of any state (or any political subdivision thereof) in compliance with the provisions of any statute of such state, of any wire or radio communication, or the divulgence, in any proceedings in any court of such state, of the existence, contents, substance, purport, effect, or meaning of any communication so intercepted, if such interception was made after determination by a court of such state that probable cause existed for belief that such interception might disclose evidence of the commission of a crime.⁹⁴

STATE LAWS

The effect of the *Benanti* decision upon state laws which attempt to authorize activity condemned by Section 605 has been discussed previously. Regardless of the effect of the *Benanti* decision, it is still worthwhile to study the state systems, because they did operate for a number of years, and, therefore, may constitute educational experience. In addition, as shown in the preceding paragraph, there is presently pending in Congress legislation which would revive those systems. Consequently, the discussion hereafter will be without reference to the possible invalidity of the statutes discussed.

State Laws Covering Wiretapping

In many states, statutes forbidding or controlling wiretapping were enacted long before the entry of the federal government into this area.⁹⁵ The first statutes were enacted around the turn of the century.⁹⁶ Frequently, nothing more was done than to add the term "telephone lines" to statutory provisions already in existence which protected the pri-

vacy of telegraph messages. This method was employed despite the obvious difference between telephone calls and telegrams—*i.e.*, that telegraph personnel necessarily become aware of the contents of the communication. The result was the emergence of particularly ill-phrased statutes regarding the newer media of communication.⁹⁷

By the time of the *Olmstead* case, over twenty states had statutes which either expressly covered wiretapping or could be construed to cover it.⁹⁸ Immediately following that decision and before the enactment of the Federal Communications Act, a number of states enacted prohibitory statutes.⁹⁹

As might be anticipated, the early emergence of many of the state statutes and the form in which they were enacted have led to a failure to be express about the problem of who may authorize an interception. Consequently, divergent views have developed, bearing no logical relationship to the requirement of Section 605 which demands consent of the sender. For instance, although this was recently changed by statute, the New York courts held for years that a subscriber could authorize a tap on his phone whether or not he was a party to the call.¹⁰⁰ California at one time appeared to hold that the consent of both the subscriber and the telephone company was necessary.¹⁰¹ However, it now seems to be established that the consent of one of the parties to the call is sufficient to take it out of the operation of the statute.¹⁰²

The states have experimented with methods of making communications available to the government. One method, which seems to be principally applicable to telegrams, is to except from the language of the prohibitory clause a divulgence under court order.¹⁰³ The Louisiana system exempts law-enforcement officers from liability for violation of the statute.¹⁰⁴ This system, as far as state law is concerned, leaves law-enforcement officers without any control. This

lack of restraint would also be found in those states which have only statutes dealing with malicious destruction of the property of the telephone company.¹⁰⁵

A greater degree of control is established under the Massachusetts statute which may require the approval of either the attorney general or the district attorney before a tap may be installed.¹⁰⁶ The New York type of statute, which appears to provide the model for most proposed legislation at both the state and federal levels, allows tapping only upon court order.¹⁰⁷ This may, in part, at least, be a manifestation of the analogy to search and seizure, or it may be a manifestation of a belief that some type of control must be established to protect the individual. Whether such a system actually limits abuses or provides only an illusory safeguard is the crux of the matter.¹⁰⁸

The states which were chosen for extensive fact investigation were selected for a number of reasons, not the least of which were the differences in the legal situations amongst them. A rather detailed report, to the extent that either the statute or case law is definitive, will be made of each of these states. This will be followed by a study of recent proposed legislation, whether enacted or not, to attempt to establish what, if any, trends are discernible, how the proposed legislation compares with the proposals in Congress, and what new or auxiliary methods of control are being considered.

California. The California statute prohibiting wiretapping dates from shortly after the start of this century.¹⁰⁹ Unlike the statute relating to the installation of a "dictograph," it makes no exception for police or other law-enforcement officers.¹¹⁰ However, until the decision in *People v. Cahan*¹¹¹ in 1955, the California courts did not exclude evidence because of the manner in which it was obtained. Although the Cahan case involved evidence obtained by an

unreasonable search and seizure, the California court has indicated that the federal exclusionary rule may be applicable to evidence obtained in violation of the anti-wiretap statute.¹¹²

The statute, which is an adaptation of an earlier statute relating to telegraphs, is a combination of terms which are either ambiguous or inapplicable to telephone taps. It clearly bans tapping and, unlike the federal statute, does not require that evidence so obtained be either used or divulged before the wiretapping is considered a crime. However, the California statute makes it criminal to use or divulge the evidence as well.¹¹³

The statute requires that the act be done "wilfully and fraudulently, or clandestinely" or "unauthorized."¹¹⁴ The exact meaning and application of these terms is questionable. The case of *People v. Trieber*¹¹⁵ apparently settled the meaning of "unauthorized." In that case, the defendant was accused of violating the statute. He had, with permission of all the subscribers involved, established extensions to their phones and used the extensions for bookmaking. An order dismissing the indictment was reversed upon appeal. The appellate court held that, in view of Section 591, which punishes malicious destruction or connection, the word "unauthorized" embodies the requirement of consent of the telephone company as well as the subscriber. This, incidentally, is the only reported prosecution under the statute.¹¹⁶

In 1951, some five years after the Trieber case, considerable doubt about the authority of that case was created by the opinion of *People v. Channel*.¹¹⁷ In that case Wills, an accomplice of the defendant, had authorized the police to listen upon an extension while he called the defendant. The evidence obtained by listening was held to be admissible. Since this was before *People v. Cahan*,¹¹⁸ the evidence

would have been admissible under the normal California rule.¹¹⁹ However, the court also said that because Wills had consented, there was no unauthorized or clandestine taking. The requirement of company approval was undermined still further in *People v. Malotte*,¹²⁰ decided after *People v. Cahan*.¹²¹

In the Malotte case, police officers, suspecting the defendant of vice activities, rented a hotel room and, using an induction coil on the room telephone, recorded a conversation with the defendant. During the conversation, arrangements were made for two girls to come to the room for purposes of prostitution. Defendant's conviction was affirmed, and the opinion stated that the Channel case had established the rule that consent of one party to the telephone call was sufficient.¹²²

Another series of cases allows police officers to take over a phone used for gambling, accept calls, and testify regarding them in the prosecution of a gambler who was the purported recipient of the calls.¹²³ The leading case, relied upon the Goldstein¹²⁴ case establishing the federal rule that evidence so obtained cannot be objected to by a person not a party to the calls.¹²⁵ Since the case of *People v. Cahan*,¹²⁶ the California courts have extended the exclusionary rule to allow a person to object to evidence obtained by unreasonable search and seizure, even though he was not the victim of the illegal actions.¹²⁷ *Goldstein*, which was relied upon in *People v. Kelly*,¹²⁸ would no longer be a persuasive precedent, since it relied upon an analogy to the federal search and seizure cases.

Punishment

A violation of the statute constitutes a felony, and is punishable by imprisonment not exceeding one year and/or a fine not exceeding \$5000. While the longest possible

imprisonment for wiretapping under any state law is a maximum of five years,¹²⁹ the California maximum of one year is the maximum most frequently embodied in the statutes.

New York. Although the basic pattern of law-enforcement tapping under court order remains, there were major legislative changes in the law of wiretapping in this state during 1957 and 1958. These were the result of extended study and hearings by a legislative committee formed as a result of the Broady wiretap scandals. It is informative to trace the development of New York law to discover how the system was evolved and what changes experience has dictated.

The general prohibition statute was an adaptation of an older malicious destruction statute.¹³⁰ There were few prosecutions under the statute,¹³¹ and although there was no express exception, it was never considered as applying to law-enforcement officers. Consequently, the judge, in dismissing indictments against such officials in 1916, referred to the activities of a special wiretap unit in the New York City Police Department.¹³² When the lines of argument were drawn in the 1938 constitutional convention, the long background of police tapping framed the issue not in terms of whether tapping should be allowed, but rather, what limitations should be imposed. One group felt that all that was needed was a provision similar to the fourth amendment to the United States Constitution. They relied heavily upon a speech Thomas Dewey made shortly before the convention, in which he indicated that many of his successes as a prosecutor could be attributed to wiretapping.¹³³ Governor Lehman, on the other hand, sent a letter to the convention recommending a provision requiring a court order and an exclusionary rule of evidence for information obtained without a court order.¹³⁴

Records of the convention are filled with lengthy, and at

times acrimonious, debates and compromises. The result was a provision which established a system of *ex parte* orders issued "only upon oath or affirmation that there is reasonable grounds to believe that evidence of a crime may be thus obtained, and identifying the particular means of communication, and particularly describing the person or persons whose communications are to be intercepted and the purpose thereof."¹³⁵ No exclusionary rule was adopted, however.

In 1942, the *ex parte* order provision was supplemented by the enactment of Section 813a of the Code of Criminal Procedure. The statute codified, in many respects, the practices in existence at that time.¹³⁶ However, it was opposed by Mayor La Guardia because of the requirement that the oath or affirmation be by the "district attorney or of an officer above the rank of sergeant."¹³⁷ This was thought to be impractical, because it precluded an oath or affirmation by the only persons with actual knowledge. On the other hand, the Citizens Union of the City of New York thought the restrictions incomplete and suggested that orders should be opened to public inspection after a reasonable time, when there was no longer the possibility that disclosure could hamper the investigation.¹³⁸ The Governor's Counsel, after pointing out that the companion bill adopting the exclusionary rule for illegally obtained evidence had failed to pass, thought the procedures satisfactory but felt that the failure to adopt criminal sanctions for violations of the procedures and the exclusionary rule made the bill deficient.¹³⁹

The statute enacted the requirements of the constitution—*e.g.*, the oath or affirmation must state that there is reasonable grounds to believe that evidence of crime will be thus obtained; it must identify the particular telephone, describe the person whose communication is to be intercepted and the purpose for so doing. In addition, the statute spec-

ified which judges might issue the orders and who might make the affidavit; gave the judges authority to examine applicants and others in deciding whether to issue an order; set a maximum of six months upon the effectiveness of an order unless it was renewed; required the delivery of the papers and order to the applicant; and required the judge to keep a copy of the order.¹⁴⁰

The constitution requires only a statement of a conclusion concerning the evidence, and if the judge is to know the facts underlying the belief, his power to examine under oath is essential. Also, it might be noticed that a six months maximum with power to renew imposes no substantial limitation upon the police.

The system is designed to obtain evidence for the apprehension and conviction of criminals. It is only natural that even before *Schwartz v. Texas*,¹⁴¹ the New York court had admitted disclosures of intercepted communications over objections based upon Section 605.¹⁴² The opinion in *Harlem Check Cashing Corp. v. Bell*¹⁴³ was cited and relied upon by Justice Minton in the Schwartz case.

Also, New York has never followed the exclusionary rule. As a result, evidence obtained without a court order is also admissible.¹⁴⁴

One other aspect of the New York law prior to the recent (1957) changes is worthy of comment. In the case of *People v. Appelbaum*, it was held that a subscriber to a phone could authorize a tap upon it, and that conversation thereupon could be recorded whether subscriber was a party to the calls or not.¹⁴⁵ This led to the so-called "legal wiretapper" in New York. Taps authorized by estranged husbands and by employers were standard procedures, although the question of who was the subscriber in the former case, at least, was often difficult to answer.

An abortive prosecution for wiretapping led to the enact-

ment of a possession statute similar to the possession of burglar tools statute.¹⁴⁶

The effectiveness of the safeguards of the New York system has been the subject of great difference of opinion. At least one judge indicated that he was going to refuse to grant any application,¹⁴⁷ and another said that the mere mention of an order caused judges to break their ribs with laughter.¹⁴⁸ Finally, the scandal of 1954 led to the appointment of a joint legislative committee.¹⁴⁹ This group, after a long series of hearings and many unsuccessful attempts at getting statutes enacted, brought about the legislative changes of this year.

The basic pattern of Section 813a of the Code of Criminal Procedure remains unchanged, though it is broadened in some respects not relevant here; more important, the effective period of the warrant is cut from six to two months. Section 813b is added to make a police officer guilty of a felony, punishable by not more than two years, for intercepting, overhearing, or recording a telephone communication to which he is not a party when he does not have the consent of one of the parties or a court order.¹⁵⁰

The crime of wiretapping is now found in a new section which also includes other electronic eavesdropping. Section 738 (1) of the Penal Law defines an illegal wiretapper as follows:

A person:

1. Not a sender or receiver of a telephone or telegraph communication who wilfully and by means of instrument overhears or records a telephone or telegraph communication, or who aids, authorizes, employs, procures or permits another to so do, without the consent of either a sender or receiver thereof: ¹⁵¹

Under this statute, a person may record his own call and he may record or overhear the calls of others if he has the

consent of one of the parties. It is significant that the statute abolishes the rule of the Appelbaum case, since "consent of either a sender or receiver" cannot be equated with that of a "subscriber." The section brings the New York rule into accord with the federal rule recently established in the Rathbun case.

Sections 739, 740, and 741 except employees of the telephone company in their normal operations, establish a two-year maximum of imprisonment, and define "person," respectively. In the last section, the word "person" is defined to exclude a law-enforcement officer "while acting lawfully and in his official capacity." As noted above, Section 831b covers tapping by police officers.

Section 742 re-enacts the section defining the crime of possession of instruments but is broadened to include all instruments for eavesdropping rather than just those for tapping.

Section 743 is a comprehensive one dealing with obtaining information from employees and their wrongfully divulging the same, except when the message is used to perpetrate a crime; fraudulent obtaining of information relating to wires, cables, and so forth; and, fraudulent obtaining of entry into company premises or installations. That section creates a duty to report messages which are used to carry on an unlawful business or a crime, and the next section places a duty upon a telephone company to report eavesdropping to law-enforcement officers.

Section 745 relates to the court orders issued under 813a. It makes disclosures of applications for and other information about those court orders a misdemeanor. The second section re-enacts the prior prohibitory statute omitting the wiretap provisions which are now covered in the eavesdropping section. Finally, the Code of *Civil Procedure* is amended by adding Section 345a to preclude admission in

a civil "action, proceeding or hearing" of any evidence obtained in violation of Section 813b of the Code of Criminal Procedure or Section 738 of the Penal Law. An exception is made for disciplinary actions or administrative actions by or on behalf of a governmental agency.

The statute, therefore, establishes police tapping without a court order as a crime, but does not exclude divulgence in any criminal trial in which it might be relevant. The statute also makes clear who may give consent to an interception, and attempts to impose an obligation of disclosure of violations upon the telephone company and to supplement the security provisions of the company. It omits any consideration of the state-federal problem, does not expressly establish any civil liability for offenders, and is obviously a compromise upon the evidentiary problem.

Illinois. Prior to 1957, Illinois precluded a "tap" if done "wilfully and maliciously" but there were no reported prosecutions under that statute.¹⁵² The prohibitory clause did not exclude law-enforcement officers, and the state follows the exclusionary rule of evidence in search and seizure cases.¹⁵³

In 1957, the legislature enacted a comprehensive electronic eavesdropping section which includes wiretapping.¹⁵⁴ This statute makes such eavesdropping a crime if done "without consent of any party thereto." This has been said to require the consent of all the parties to the conversation.¹⁵⁵ However, the phrase would appear to be equally consistent with a holding that the consent of any party to the conversation would be sufficient.

The statute differs from the federal statute in that either overhearing or divulgence is punishable separately. Also, it expressly purports to cover federal agents. Insofar as overhearing is sufficient to violate the act, the various theories

established by former United States Attorney Generals to legalize tapping by members of the Federal Bureau of Investigation are inapplicable. On the other hand, any attempt of a state to limit the federal officers' acts pursuant to carrying out their jobs would raise serious constitutional difficulties.¹⁵⁶

The Illinois act attempts to ensure its enforcement by precluding evidence obtained in violation of its terms; by providing for injunctions and punitive and actual damages; and by requiring the telephone company, subject to the payment of reasonable costs, to furnish whatever services it may have at its disposal to detect electronic eavesdropping.

Louisiana, Massachusetts, Nevada, and New Jersey. The legal situation in these states is relatively uncomplicated. In most instances, the statutes have not been used for prosecutions to any extent, and case law is negligible.

Louisiana: Louisiana's statute says:

No person shall tap or attach any devices for the purpose of listening in on wires . . . without the consent of the owner. . . .¹⁵⁷

The statute expressly does not apply to law-enforcement officers. Consequently, of course, no evidentiary problems would arise concerning an exclusionary rule. Violation of the statute by private persons constitutes a misdemeanor, punishable by a maximum fine of \$300 or a maximum imprisonment of three months. Because of the lightness of the punishment provided by the statute, when a private detective recently was arrested for tapping the telephone of the mayor of New Orleans, the district attorney turned the prosecution over to the federal authorities for prosecution under the more severe Federal Communications Act.¹⁵⁸

Massachusetts: This state's statute outlaws wiretapping to "procure any information concerning any official matter or

to injure another," except when authorized by the attorney general or a district attorney.¹⁵⁹ It is doubtful if police wire-tapping without such authorization would fall within the prohibition because of the limitation quoted above.

Two significant variations are apparent in the statute. It is the only state statute which establishes a system of authorization by the legal officer of the state or district. In this regard, the statute was upheld against a claim that it constituted an unconstitutional delegation of legislative power.¹⁶⁰ Legislation requiring a court order was vetoed by Governor Herter.¹⁶¹ In addition, it is the only state statute sufficiently broad to allow an authorization of a tap by a private citizen.

Nevada: Nevada enacted a new statute in 1957. It is of the New York court order type, but makes substantial changes even from the present New York statute.¹⁶² The order may issue only if "there are reasonable grounds to believe that the crime of murder, kidnaping, treason, sabotage or crime endangering the national defense has been committed or is about to be committed"; there are similar grounds to believe that evidence will be obtained; and, no other means are readily available.

The Nevada statute also adopts an exclusionary rule in *all* proceedings for evidence obtained in violation of the act. This provision, by the words "directly or indirectly," obviously adopts the rule of the second *Nardone* case. Another evidentiary limitation is that evidence obtained under a court order is admissible only if related to one of the above-listed crimes and then only in a criminal trial or Grand Jury inquiry into that crime. Other differences are that Nevada limits a renewal order to thirty days and, in some respects, has a more complete disclosure section. Nevada does not have provisions comparable to those in New York which require the telephone company to report vio-

lations or to augment the company's security system. Neither state includes a tap with the consent of one of the parties to the call within its prohibitory section; both include other forms of eavesdropping; and the sixty-day limitation upon a court order in Nevada does not differ materially from New York's two months.

New Jersey: The New Jersey statute precludes wilful and malicious tapping.¹⁶³ Although there is no provision for law-enforcement activity, the prosecutor of Union County claimed that in intercepting telephone messages to ferret out and to solve crimes he could not be acting "wilfully and maliciously." In *Forbes v. Morss*, the New Jersey Supreme Court disapproved the prosecutor's position, although such a ruling does not appear to be necessary to the decision.¹⁶⁴ This is an important ruling insofar as those terms are extensively used in statutes.

New Jersey's statute, which expressly prohibits divulgence as well as tapping, has been classed as an evidentiary statute.¹⁶⁵

Other interpretations of the statute have held that a recording taken by one of the parties does not come within the statute,¹⁶⁶ and that it does not apply to a company switchboard operator who listens to a conversation and discovers a conspiracy to defraud that company.¹⁶⁷

Although it is not relevant, perhaps, in view of the express statutory provision against divulgence, New Jersey did not follow the exclusionary rule in unreasonable search and seizure cases. However, the most recent New Jersey Supreme Court opinion does appear to leave open the question of what the results will be where police activities are more than technical errors.¹⁶⁸

Pennsylvania: Until recently the Pennsylvania law consisted solely of a statute relating to telephone employees.¹⁶⁹ However, in *Commonwealth v. Chait*, wherein the defend-

ant had objected to the use of police wiretap evidence, the Pennsylvania Supreme Court affirmed the trial court's admission of evidence.¹⁷⁰ Pennsylvania had no statute against such police activity and does not follow the federal exclusionary rule in any event. The fact that divulgence might constitute a federal crime under Section 605 bothered the court. However, Chief Justice Stern wrote the majority opinion and went to great length to conclude that such a divulgence was not a federal crime. Reliance was placed upon the fact that the United States Supreme Court would not make such evidence available to the states, as was done in *Schwartz v. Texas*,¹⁷¹ and still hold divulgence a federal crime.¹⁷² Of course, this overlooks the statement in Justice Minton's opinion in the Schwartz case that such disclosure was a federal crime. Justice Stern's view seems wholly discredited by *Benanti v. United States*.¹⁷³

In 1957, the Pennsylvania legislature enacted a prohibitory statute.¹⁷⁴ It was made a crime to intercept a telephone or telegraph communication without the consent of the parties thereto; to install or employ any device for overhearing or recording such communications; or to divulge or use the contents of such an intercepted communication.

The draftsmen were obviously aware of the problems which have arisen under the federal statute. As a result, they expressly required the consent of both parties to the communication; they expressly covered governmental employees; they defined divulgence as including divulgence to a fellow employee or governmental official; and they expressly made evidence obtained as a result of an unlawful interception inadmissible except in a suit or prosecution for a violation of the act. It might be noticed that the requirement of the consent of both parties is a different result from that reached in *Rathbun v. United States* under Sec-

tion 605.¹⁷⁵ The attempt to control federal employees acting on behalf of the federal government raises doubt as to the legislature's power. Preventing the institutionalization of divulgence between government employees, such as the Attorney General's opinion has established in relation to Section 605, is not as necessary under a statute in which either the interception or the divulgence is criminal. Under the Pennsylvania statute, unlike the situation under Section 605, the agent would be guilty of a crime for the interception alone.¹⁷⁶

Two other provisions are significant. The express allowance of evidence obtained by an unlawful interception into a suit or prosecution under this act anticipates the problem in *United States v. Gris*.¹⁷⁷ Also, a civil remedy is expressly given to the victim, and, equally important, minimal damages of \$100 and reasonable attorney fees are allowed.

TRENDS AND INNOVATIONS

Although some jurisdictions are to the contrary, a study of proposed legislation on both the federal and state levels indicates a trend toward prohibition of tapping, with an exception for law-enforcement officers under court order. The federal government leans toward limiting law-enforcement tapping to specific crimes, but on the whole, such a tendency is not shown on the state level.

Another significant tendency is the definition of the prohibited activity so as to exclude interceptions with the consent of one of the parties. This may be a recognition of basic business necessity.

Statutes have existed for years, but enforcement is negligible. This, of course, indicates two basic means of improvement. In the first place, steps to improve enforcement of

the criminal statutes must be considered, and secondly, auxiliary methods of preventing the undesirable conduct should be investigated.

In the first group of innovations are those which extend the area of criminality, such as the New York possession statute. It might be noted that no *state* statute requires both an interception and a disclosure of use, as does the *federal* statute. Another example of extension of criminal liability is New York's attempt to foreclose leaks of necessary information, such as cable numbers, to prospective tappers.

Another type of statute in the criminal enforcement area is the requirement, under criminal sanctions, placed upon telephone companies and private detectives to report violations. It is obvious that many violations never become known, and improvement of discovery procedures is essential.

On the other hand, it is apparent that criminal sanctions are inadequate to prevent this activity. Consequently, the tendency has been to adopt the exclusionary rule of evidence, presumably to destroy the incentive for tapping. Another non-criminal sanction is to provide for civil liability on the part of the tapper. Since damages may be difficult to prove, the statutes provide a minimum amount—usually \$1000. One proposal provided for a forfeiture of \$1000 in a criminal trial, the amount to be given the victim in addition to any sum he may recover in a civil action. Illinois does not establish a minimum but allows punitive damages and extends the liability to people other than the tapper.¹⁷⁸

Although the emphasis has been upon establishing a court order system, little progress has been made in refining the prerequisites to avoid abuse. The only significant change in relation to court orders has been to limit their duration. As was mentioned above, some states have adopted exclusionary rules of evidence unless such evidence was obtained

under court order. The Nevada limitation of admissibility to specific crimes, even then, may be significant to the extent that the ambiguities of the prerequisites make possible "fishing" expeditions, or the transferring of an order from one situation to another. It appears to be a fairly safe prediction that the New York statute imposing criminal liability for police who tap without an order will be ineffective. Prosecutions for other types of police abuse do not demonstrate any reason for optimism for the New York experiment.

Finally, the case of *Benanti v. United States* is leading to a long overdue appraisal of the relationship between the federal and state laws. Whatever the result of such an appraisal may be, it should eliminate the inconsistencies and the confusing blind spots that have existed. It is to be expected, however, that the states having laws permitting wiretapping will preserve the *status quo*, being confident that the declaration of the Supreme Court will not be implemented by federal prosecution.

EAVESDROPPING

Analysis

As has been previously mentioned, wiretapping is only a specialized form of eavesdropping. The first part of this section should attempt to delineate the meaning of this term and to establish what have been, or should be, the outer limits of the individual's right to privacy. Reference to the wiretap law is helpful, therefore, in this regard.

It was there demonstrated that the majority of courts and legislators felt that the right of privacy did not extend to instances where one party to a conversation had consented to a third party overhearing it. Standard rules of evidence

support this position save for the limited exceptions relating to confidential communications. Under the law of evidence the other party to a conversation can testify, and even be compelled to testify, as to conversation when the declarant is a party to a suit and his opponent wants to introduce the statement against him,¹⁷⁹ unless it was made within the confidential communication. Also, of course, the other party to the conversation can normally repeat it to whomever he chooses without fear of legal liability. In short, a person is bound at his peril to evaluate the reliability of those with whom he converses. As a consequence, if the third person overhears with consent of one of the parties, the non-consenting party can complain only insofar as there are now two witnesses to his statement rather than one, and the second may be more credible than the first. Of course, to the extent that the overhearing party is actually, as opposed to ostensibly, more credible, the non-consenting party may not complain. In a non-evidentiary sense, he cannot complain, since presumably the overhearing party is receiving an authentic version, rather than the garbled or slanted version that the other party might impart to him.

If the third party overhears and records the conversation, the non-consenting party can complain about the unforeseen fact of making permanent his statement, about the possibility of alteration if such a possibility exists, and about the greater convincing power of the evidence in his own voice. These additional factors seem to differentiate this situation, but the only substantial cause of complaint is the greater convincing power of the evidence if it has in fact been altered. Therefore, the above analysis would appear to justify the conclusion that eavesdropping violates a substantial interest of the declarant only where it is not consented to by either party to the conversation or where the

conversation is within those relationships wherein the law protects confidential communications. In the former situation, the declarant has no chance to rely upon his evaluation of the integrity of the person he is addressing. In the latter, the law may protect him evidentiarily, at least, in spite of his mistaken reliance.¹⁸⁰

From this it necessarily follows that the police informer system violates no rights at least insofar as the informers operate upon information given them by persons who are either unaware of their position or unconcerned about it. Cellmate informers, and others who may affirmatively mislead, may be in a different position, because of the active deceit practiced in obtaining the confidence of the declarant. Such tactics are used, of course, and the unfavorable reaction sometimes created may be more against "dirty business" on the part of the government than based upon a belief that the declarant's right to privacy has been violated. Consequently, although serious legal problems arise concerning the credibility of informers,¹⁸¹ they will not be treated separately herein.

Another area of the law wherein the apparent relation to the subject at hand fades upon close analysis is the defense of entrapment. Accepted dogma in the area is that the intention to commit the crime must originate in the mind of the police officers.¹⁸² Since the victim of the entrapment would have committed no crime, had he not been entrapped, it would be ludicrous to pay police to instigate the very activity that society has attempted to prevent by the establishment of criminal sanctions.¹⁸³ Justice Roberts's concurring opinion in *Sorrells v. United States* is representative of another approach to entrapment—that of keeping the temple of justice clean.¹⁸⁴ Neither of these theories of the defense relates to the privacy of the individual.

History

The history of eavesdropping as a crime is an interesting example of a common-law crime which all but disappeared from the books, only to emerge in a new social context in a new and invigorated form. The last English case was apparently in 1390, but Blackstone and others have kept the crime alive by mention of it in their texts.¹⁸⁵ The crime was recognized by some early American cases in Tennessee and Pennsylvania, as well.¹⁸⁶

The Tennessee cases are so cursory as to be of no value.¹⁸⁷ However, the Pennsylvania case is more interesting. In that case, the judge instructed, "Did he go there and listen, with the intent to frame slanderous tales? . . . and if you are satisfied that he did listen with that intent, you may convict him on the indictment." However, it was added that "some evidence has been offered to show that the owner of the house—the husband—gave this man authority to watch his wife. If he did so, as he had a right to do, the defendant should be acquitted. There is no law that can prevent a husband from constituting a watch on his wife."¹⁸⁸

Blackstone (4 COMMENTARIES ch. 13, § 5 (6)) defined the offense as follows:

Eaves-droppers, or such as listen under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are a common nuisance and are punishable at the court-leet; or are indictable at the sessions, and punishable by finding sureties for their good behavior.

The definition, like those of the other nuisance offenses, requires that the act be "habitual." It has been held that an indictment alleging only one instance is defective.¹⁸⁹

The former New York statute, one of the few for a long period of time, made some attempt to modernize the Black-

stonian definition, but has been described as inept.¹⁹⁰ It read as follows:

Penal Code, Section 721. A person who secretly loiters about a building, with intent to overhear discourse therein, and to repeat or publish the same to vex or annoy or injure others, is guilty of a misdemeanor.

The Joint Legislative Committee soon found that electronic devices had made modernization of the concept essential.¹⁹¹ As has been previously mentioned, improvement of this area of the law was a major change of the 1957 legislation, and it was changed again in 1958. The necessity of revitalized controls in this area is recognized in the California committee reports.¹⁹²

Federal Law—Eavesdropping

There are, of course, no federal common-law crimes, and there is no general federal eavesdropping statute. As a consequence, whatever law exists is a result of evidentiary problems. Evidence obtained by wiretapping was attacked in *Olmstead* as acquired by a violation of the fourth amendment. Wiretapping was claimed also to be "dirty business." To the extent that morally the act is bad, the Supreme Court has the power to control it by the refusal to admit the fruits thereof. An example of this power is the doctrine of the *McNabb* case relating to confessions obtained prior to a preliminary hearing which has been unnecessarily delayed.¹⁹³ The case of *Rea v. United States*,¹⁹⁴ discussed above, is another manifestation of the same power.

In discussing *Olmstead v. United States*,¹⁹⁵ it was pointed out that the majority apparently relied upon three factors in holding that wiretapping was not an unreasonable search and seizure. These were, first, that there was no seizure of a material thing or of a person; second, that the speaker in-

tended to have his voice go outside of the room; and third, that there was no trespass upon the defendant's property. The first factor is always present in eavesdropping. Different consequences may follow, however, dependent upon whether all three requirements are considered essential to the holding or whether the first plus either the second or the third is sufficient.

In *Goldman v. United States*,¹⁹⁶ also discussed in relation to wiretapping, the federal agents had first entered the office of defendant to install a dictaphone. In addition, the officers had used a detectaphone against the wall of his office. The use of the detectaphone did not require a physical trespass. The dictaphone did not work, but the detectaphone did. Officers overheard and made notes of defendant's conversation by means of the latter instrument. Their testimony was admitted at trial, and the defendant was convicted. The conviction was affirmed.

Justice Roberts, writing for the majority, accepted the finding that there was no use of the information obtained by the trespass. As a result, the first and third tests of the *Olmstead* case were met. Concerning the attempt to distinguish *Olmstead* on the basis of the lack of intent that at least some of the conversation should go beyond the confines of the room, Justice Roberts said:

We think, however, the distinction is too nice for practical application of the Constitutional guarantee, and no reasonable or logical distinction can be drawn between what federal officers did in the present case and state officers did in the *Olmstead* case.¹⁹⁷

If the defendant's position had been accepted in its entirety, the practical problems would not have arisen. The statements made over the telephone would have been inadmissible because of Section 605, and the remainder, since

there was no intent that the voice go outside of the room, would have been inadmissible under the normal exclusionary rule associated with unreasonable searches and seizures.

Justice Murphy in his dissent takes the two-pronged position that *Olmstead* should be overruled but if not, the *Olmstead* case is not controlling because of the lack of the necessary intent.

Ten years later the case of *On Lee v. United States*¹⁹⁸ was decided. In that case an informer, who was apparently of extremely low credibility, entered On Lee's laundry and engaged him in a conversation. Unbeknownst to On Lee, there was a small radio transmitter upon the informer which broadcast the discussion to a treasury agent some distance away. No recording was made of the conversation, but the agent was allowed to testify as to the contents of the purported conversation. The trial judge's ruling was affirmed by the Supreme Court.

On the basis of the analysis above, it might be argued that the conduct was not eavesdropping because of the informer's obvious consent. However, this was not mentioned in the opinions. The majority opinion, written by Justice Jackson, followed the prior decisions holding that there was no violation of the fourth amendment and refused to control this type of activity by police through the exclusionary rule. The defendant contended that the doctrines of trespass ab initio and the vitiation of consent by fraud sufficed to create the requisite trespass. These contentions were dismissed because it was deemed to be unwise to introduce the niceties and complexities of the tort law into an evidentiary ruling.¹⁹⁹ Justice Black dissented upon the theory that the Court should control police activities; Justice Frankfurter dissented upon the grounds that lawlessness begat lawlessness; Justice Douglas confessed error in joining the majority in *Goldman* and thought it should be overruled along

with *Olmstead*; and Justice Burton's dissent, concurred in by Justice Frankfurter, stressed the fact that the conversation took place in On Lee's store. The On Lee case has been followed in a variety of situations.²⁰⁰

The case of *People v. Irvine*,²⁰¹ although a due process case, seems to establish that if there is a trespass, the eavesdropping constitutes an unreasonable search and seizure.²⁰² In that case, the police made keys to Irvine's front door, surreptitiously entered and installed a microphone, and drilled holes in the roof to run the wires to a listening post. When results were not satisfactory, a second entry was made to transfer the microphone to the defendant's bedroom. Better results were apparently obtained in the new location. When enough had been heard, the police once again let themselves in, arrested the defendant, and seized evidence of the crime. The entire Supreme Court considered this an unreasonable search and seizure and a violation of defendant's civil rights, even though the majority followed *Wolf v. Colorado*,²⁰³ thereby refusing to reverse the conviction.

State Statutes

The New York statute upon eavesdropping was thought by the Joint Legislative Committee²⁰⁴ to be clearly inadequate. By far the great majority of states had no statute of any kind.²⁰⁵ Of course, eavesdropping as a crime remained a possibility in those states retaining the common-law crimes in addition to the statutory offenses.²⁰⁶

California's statute prohibits the installation of a dictograph in a group of listed places and vehicles (the lists appear to be an attempt to be all-inclusive) without the consent of the "owner, lessee or occupant."²⁰⁷ An exception is created for "regularly salaried peace officer(s)," acting with the authorization of the department head or district attor-

ney, when necessary in detecting crime and apprehending criminals.

The ambiguities in the statute are obvious. Is the consent of the owner necessary if there is a lessee, or vice versa? The term "dictograph" does not seem to include the use of a Minifon, a short-wave radio transmitter as in *On Lee*, and countless other devices. The legislature chose not to extend the coverage to eavesdropping in the open. The term "regularly salaried peace officer(s)" is unduly confusing and would appear to confound police if they desire to hire specialists to do the job.²⁰⁸

It should be noted also the statute does not require an actual overhearing or recording, since the condemned act is the installing or the attempt to install. The emphasis upon the place also means that no concern is demonstrated for the distinction between the situations where one party to the conversation knows of the device and where neither does. Obviously, the conversation may not involve the person whose consent is required. This is most apparent if only the owner's consent is necessary in leased premises.

Prior to *People v. Cahan*,²⁰⁹ it probably made little difference whether the requirements of the exception were met, because the evidence was admissible in any event, and, apparently, the statute wasn't enforced. However, after that case adopting the exclusionary rule new significance was given to its ambiguities and limitations.

The vehemence of the United States Supreme Court opinion in *Irvine v. People*²¹⁰ probably triggered the reconsideration of the exclusionary rule.²¹¹ It also impressed upon the California courts that the statutory exception could not make legal invasion of the constitutional rights of the defendant.²¹²

New York's former statute has been set forth above, and, since it has undergone extensive changes, needs no further

comment. North Dakota's statute is similar to the old New York enactment.²¹³

The Massachusetts statute, like New York's, requires a "secret" hearing or an attempt to overhear secretly.²¹⁴ Like the California statute, it refers to a particular device—i.e., "dictograph or dictaphone," but it does add "or however otherwise described, or any similar device or arrangement." It is dubious if Minifons and the like come within these phrases. This doubt is fortified by the requirement that the secret overhearing be in "any building." Therefore, since California includes things other than buildings, the Massachusetts statute is narrower than California's.

While California punishes the installation and the Massachusetts statute requires at least an attempted overhearing, the difference is, in part at least, compensated for by the Massachusetts statute's making proof of installation a *prima facie* case of the commission of the crime.²¹⁵

Two exceptions appear in the statute. The act is not criminal if done with the written consent of the attorney general or district attorney.²¹⁶ In addition, the *prima facie* section contains the following "but nothing contained in this or the two preceding sections shall render it unlawful for any person to install and use such a device on premises under his exclusive control." Presumably this ambiguous statement is designed to allow normal business practices. It must mean that installation under such circumstances does not prove a *prima facie* crime, but it does not necessarily mean that the installation can be used to overhear secretly.²¹⁷

Recent Recommendations and Changes

Five states, at least, enacted recent legislation in the eavesdropping area. Two of these states, however, enacted very limited legislation. Massachusetts prohibited eavesdropping

upon juries.²¹⁸ The statutory requirements for conduct to fall within it are the same as those found in the general statute, except that this statute requires "intent to procure any information relative to the conduct of such jury or any of its members." The statutory maximum penalty is five years or \$5000 or both, whereas in the general section the statutory maximums are two years or \$1000 or both.

California enacted a statute prohibiting eavesdropping without the consent of all parties where one party is either in the custody of a law-enforcement or other public agent or is on the property of a law-enforcement agency or other public agency and the conversation is with his attorney, religious adviser, or licensed physician.²¹⁹ The obvious thrust of the statute is to protect certain confidential relationships under circumstances in which police officials have sometimes violated them. This statute, in these prescribed circumstances, negates the police exception found in the regular eavesdropping statute.

The above two statutes represent only reactions to limited abuses. However, the California statute, which was only a minor part of the legislation offered, followed a lengthy report of the California legislative committee which came to the following conclusion:

In summary, the implicit physical restrictions of the present telephone system to its actual lines indicates present statutory provisions on wiretapping have generally been capable of keeping abreast of scientific developments in that field thus far. The law of bugging, however, is in need of clarification in a number of respects, and will have to be frequently reviewed in the light of developing technology.²²⁰

While not as satisfied with the law of wiretapping, the New York committee stated even more emphatically the

need for revision of the eavesdropping law in the light of modern techniques. It is significant that these two committees have had extended hearings and both arrived at the same conclusion.

Two different sets of bills were introduced into the California legislature. The bill introduced by the committee was the one adopted, and there was another which attempted to clarify difficulties in the general bugging statutes. The latter statutes gave the right to grant consent to the installation to the person "having primary right of possession." In cases of leases and tenancies, the man who has contracted for right of possession has the primary right during lawful occupancy. In addition, a warning must be posted on the premises involved in letters six inches high. Similar posting is required if the electronic recording is to be made in a public place. This appears to be a major extension of control. Exceptions were included for regularly salaried police officers, deaf persons, and employees of utilities.²²¹ This bill was passed by the legislature, but vetoed by the governor on the ground that it exempted police from its coverage.

A second set of bills were introduced, but not passed. These would have prohibited recordings unless there was consent of both parties to the conversation or an ex parte court order. It was expressly provided that the court order could not authorize either a trespass or a wiretap and that evidence obtained in violation of the statute was inadmissible.²²² Incidentally, this is similar to the Nevada legislation which extended a system of court orders to eavesdropping.²²³

New York redefined eavesdropping to include wiretapping and recording or listening to the deliberations of the jury as well as in the following manner:

§ 738. Eavesdropping

A person:

...

- (2) not present during a conversation or discussion who wilfully and by means of instruments overhears or records such conversation or discussion, or who aids, authorizes, employs, procures or permits another so to do, without the consent of a party to such conversation or discussion; ²²⁴

The section defining "person" for the purposes of this article in the 1957 act excluded a law-enforcement officer "while acting lawfully in his official capacity in the investigation, detection or prosecution of a crime." The police, therefore, were obviously not hindered in relation to the activities covered by the quoted section.

However, in 1958 appropriate amendments were made to bring police officers within the eavesdropping section and to broaden Section 813a of the Code of Criminal Procedure to provide for the issuance of court orders to law-enforcement officers for the purposes of eavesdropping.²²⁵ Approval of a court order system was achieved by allowing such eavesdropping without an order if there is not time to obtain it.²²⁶ In such a case, an order must be sought within twenty-four hours of the time that the eavesdropping is commenced.

The terms used are all-inclusive, but it is significant that the consent of one of the parties is sufficient to authorize the conduct. This differs from both proposals in California. In the first California proposal mentioned above, the consent of the person who has the right of immediate possession may mean that neither party to the conversation may have consented, but the posting requirement is obviously designed to give both parties warning. The second California bill required the consent of both.

The phrase "not present during a conversation" in the New York statute is novel. Clearly, in a face-to-face conversation between *A* and *B*, *A* could record without *B*'s consent. However, suppose *A* and *B* are having a conversation and *C* is in the room. Is *C* present during the conversation if it is loud enough for him to hear? It could be argued that *A* and *B*, by conversing with him in the room, run the risk of his overhearing. Obviously that would not be true, however, if *C*'s presence is not known to them or if his position is such that they reasonably believe he could not hear. The meaning of the phrase is ambiguous enough to preclude prediction as to the precise effect of the provision.

Nevada enacted a statute which reads as follows:

Except as otherwise provided in Section 7, no person shall intrude upon the privacy of other persons by surreptitiously listening to, monitoring or recording or attempting to listen to, monitor or record, by means of any mechanical, electronic or other listening device, any private conversation engaged in by such other persons, or disclose the existence, contents, substance, purport, effect or meaning of any such conversation so listened to, monitored or recorded, unless authorized to do so by one of the persons engaging in the conversation.²²⁷

The Nevada prohibitory section applies to eavesdropping by police officers.²²⁸ However, the Section 7 referred to in the quoted section allows such overhearing under a court order. The court order provision is of the standard variety, but it is limited to murder, kidnaping, treason, sabotage, or crime endangering the national defense. It also requires that, where the application is upon information or belief, the facts giving rise to the belief must be set forth.

The Illinois statute of 1957²²⁹ has been discussed in the wiretapping section of this report. That discussion is relevant here because all the sections are equally applicable to

wiretapping and electronic eavesdropping. Suffice it to say at this juncture that all electronic eavesdropping is prohibited and no exception is made for law-enforcement officers.

Recordings as Evidence

Evidence obtained by wiretapping is still admissible in some state courts,²³⁰ and evidence obtained by other forms of eavesdropping is generally admitted.²³¹ In addition, recordings are used in other types of situations which raise the question of their admissibility.²³² Assuming proper authentication, recordings are generally allowed into evidence.²³³ The problems of authentication do not appear to be novel.²³⁴ It is necessary to identify the voices and to lay the foundation that is normally required for the introduction of real or demonstrative evidence.

Best Evidence. The best evidence rule's application takes several forms. For instance, it has been held that the original recording is the best evidence, so that a reproduction is not admissible ²³⁵ unless production of the original is excused.²³⁶ However, people overhearing the conversation may be allowed to testify as to it even though a recording was made.²³⁷

A different problem arises when the question of the necessity of recording is considered. A proposed Missouri statute would allow only a recording of a statement obtained by eavesdropping.²³⁸ A similar suggestion was voiced by Louis B. Schwartz.²³⁹ This seems to be justified, in part at least, by the unfortunate aftermath of *On Lee v. United States*.²⁴⁰

In the *On Lee* case, the defendant was convicted upon the testimony of a government agent relating to a conversation between *On Lee* and an informer, which the agent

purportedly heard by means of a short-wave radio attached to the informer. After conviction, On Lee moved for a new trial on the grounds of an affidavit by the informer that no such conversation took place. It was also alleged that the agent had been released from the government service for improper acts.²⁴¹ The motion was denied.

If the allegations contained in the motion were true, there is serious doubt concerning On Lee's guilt. Such doubts might have been impossible if a recording of the conversation had been required. Assuming, however, a desire to fabricate, recordings may be altered to turn innocuous conversations into incriminating statements, and if this is done expertly, there is little danger of discovery. Consequently, the value of a recording as a safeguard is greatly minimized.

Procedure. It has been urged that the recording first be played for the judge out of the hearing of the jury.²⁴² This gives the judge the opportunity to determine its clarity, to have irrelevant and possibly prejudicial material expunged, if possible, and to rule upon other objections. The obvious advantage in such a system is to preclude the possibility of a mistrial caused by the jury's hearing prejudicial evidence.

It has been held that the question of whether the recording is clear enough to aid the jury is within the discretion of the trial court.²⁴³ Also, it has been held that a recording is not rendered inadmissible merely because it contains irrelevant material which cannot be eradicated.²⁴⁴

Another problem which could be decided at the hearing without a jury is whether the recording is complete. Some courts have held that the partial nature of the recording does not render it inadmissible,²⁴⁵ but the Pennsylvania Superior Court has indicated a contrary opinion.²⁴⁶

If the recording is to be admitted into evidence, it can be played to the jury in the trial. It is an approved prac-

tice in New York to give the jury typed transcripts of the recording to follow as the recording is played.²⁴⁷ Whether this procedure is followed or not, it has been recommended that the clerk make a copy of the recording as it is played.²⁴⁸ This suggestion would obviously facilitate the making of a record for appeal.

The person against whom the recording is being introduced may call an expert witness to attack the authenticity of the recording.²⁴⁹ The real question is whether the expert is entitled to examine the recording prior to trial. It has been stated that such recordings do not come within the federal rule for discovery in criminal matters.²⁵⁰ Many alterations, if discoverable at all, can be discovered only after testing. Therefore, it appears desirable to allow the opposing party's expert to examine and test the recording prior to trial.

Added weight is given to recordings by the rule which allows the recording and the instrument upon which it is played to be taken to the jury room.²⁵¹ Jurors may have only a hazy memory of the testimony while the facts in the recording can be checked constantly. This is true, of course, of all real evidence and serves only to demonstrate, once again, the necessity of great care in the use of this type of evidence.

VISUAL OBSERVATION

Unreasonable Search and Seizure

Here, as in electronic eavesdropping,²⁵² the presence of a physical trespass upon a constitutionally protected area is crucial. If the observer has committed no trespass to attain the position from which the observation is made, there is no unreasonable search and seizure. Consequently, it is apparently permissible to look into windows,²⁵³ through tran-

soms,²⁵⁴ and even through peepholes in the door.²⁵⁵ Also, it is apparently permissible to use a searchlight,²⁵⁶ a flashlight,²⁵⁷ or binoculars in making the observation.²⁵⁸

The scope of protection is circumscribed by the normal limitations upon the constitutional provision. For example, it is not every trespass that will constitute a violation. A trespass upon the property of the defendant does not invalidate the testimony of the observer if it did not constitute a trespass upon the curtilage, even though the facts observed took place within the curtilage.²⁵⁹ Presumably the protection extends to other constitutionally protected areas if the fact of trespass thereon is shown.²⁶⁰

Clearly, if observation is after a wrongful invasion of the home, the trespasser may not testify as to what he sees.²⁶¹ This is true even though the things seen are in plain view and even though the invasion is labeled an inspection rather than a search.²⁶²

It is difficult to establish a consistent theory in the cases. The Maryland court, in deciding that there was no unreasonable search and seizure, indicated that it was because the act was done where the possibility of observation was apparent.²⁶³ It is probably true that the actor's privacy should not require another to close his eyes to the obvious. On the other hand, such a theory would not justify the holdings saying there was no unreasonable search and seizure within the constitutional provision in cases wherein the observation was possible only by peeping through transoms or peepholes, or by the use of artificial aids to sight, or by a civil trespass upon lands other than the curtilage.²⁶⁴ In such cases, the actor most probably assumes privacy.

Courts have recognized, however, that the policy of the amendment would be undermined if the persons conducting an illegal search could testify as to their observations instead of seizing the things observed.²⁶⁵ Similarly, although

photographs are generally admissible,²⁶⁸ photographs taken during the process of an illegal search will be suppressed.²⁶⁷

Visual Observation as a Crime

A number of states have so-called "Peeping Tom" statutes. The statutes, many of which are of relatively recent origin,²⁶⁸ differ in several respects and there are few cases interpreting them. In addition, prosecutions for this type of behavior may be possible under local ordinance.²⁶⁹

The purpose of the statute may be to protect the privacy of any inhabitant of the building,²⁷⁰ or such purpose may be limited to invasions of the privacy of a woman.²⁷¹ The latter group raise, at least inferentially, the possibility that the major purpose of the statute relates to sex offenses rather than any abstract concept of privacy.

Many of the statutes require that the actor peep into a dwelling,²⁷² but one expressly includes a "business house or other building,"²⁷³ and some use the term "premises."²⁷⁴ Similarly, some require a trespass,²⁷⁵ others are ambiguous,²⁷⁶ and Louisiana's statute expressly does not require a trespass.²⁷⁷

The statutes are generally worded in terms sufficiently broad to cover police officers. However, one statute expressly exempts "an officer performing a lawful duty,"²⁷⁸ and although there is no such exception in the North Carolina statute, it has been suggested that this limitation would probably be applied in that state.²⁷⁹

NOTES

PART ONE

THE ROOTS

1. Cal. Stats. 1862, p. 288; CAL. GEN. LAWS act 8530 (Deering 1944).
2. Sacramento Daily Union, Aug. 12, 1864, p. 2, col. 4.
3. 2 HEROS VON BORCKE, MEMOIRS OF THE CONFEDERATE WARS FOR INDEPENDENCE 168.
4. The New York Times, Aug. 3, 1894, p. 7, col. 1.
5. The New York Times, May 18, 1916, p. 1, col. 1.
6. *Ibid.*
7. San Francisco Call, Jan. 1, 1899, p. 3.
8. The New York Times, April 19, 1916, p. 4, col. 2.
9. The New York Times, May 27, 1916, p. 3, col. 6.
10. The New York Times, May 19, 1916, p. 2, col. 2.
11. The New York Times, May 19, 1916, p. 10, col. 2.
12. The New York Times, Oct. 2, 1929.
13. 48 Stat. 1103 (1934), 47 U.S.C. § 605 (1946).
14. N.Y. CONSOL. LAWS ANN., CODE OF CRIM. PROC. § 813a (McKinney 1944).
15. Interview: member of the raiding squad.
16. *Ibid.*
17. *Ibid.*
18. The New York Times, Dec. 17, 1948, p. 19, col. 6.
19. *Hearings on S. Res. 224 Before a Subcommittee of the Senate Committee on Interstate Commerce*, 76th Cong., 3d Sess., Pt. 2 at 517 to 520 (1940).
20. *Ibid.* at 382.
21. *Ibid.* at 183-216.
22. *Ibid.* at 217-238.
23. N.Y. CONSOL. LAWS ANN., CODE OF CRIM. PROC. § 813a (McKinney 1944).
24. *Hearings Before the Subcommittee to Investigate Wire Tapping in the District of Columbia of the Senate Committee on the District of Columbia*, 81st Cong., 2d Sess. at 50-60 (1950).
25. New York Joint Legislative Committee to Study Illegal Interception of Communications.

26. The New York Times, March 13, 1949, p. 1, col. 8, *Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary*, 84th Cong., 1st Sess. at 221 (1955).
27. The New York Times Magazine Section, Dec. 12, 1958, p. 17.

PERMISSIVE JURISDICTIONS

NEW YORK

1. New York State Constitutional Convention (rev. record) 368 (1938).
2. N.Y. CONST. ART. 1, § 12 (1938).
3. N.Y. CONSOL. LAWS ANN., CODE OF CRIM. PROC. § 813a (McKinney 1944).
4. The New York Times, April 19, 1916, p. 4, col. 2.
5. Interview: New York County District Attorney's office.
6. *Hearings on H.R. 762 Before Subcommittee No. 5 of the House Committee on the Judiciary*, 84th Cong., 1st Sess. at 310-355 (1955).
7. *Ibid.* at 322.
8. *Ibid.* at 97-125.
9. *Benanti v. United States*, 355 U.S. 96 (1957).
10. *Hearings on H.R. 762 Before Subcommittee No. 5 of the House Committee on the Judiciary*, 84th Cong., 1st Sess. at 314-315 (1955).
11. *Ibid.* at 315.
12. Silver's tabulation of this activity is reproduced in the Appendix at p. 117.
13. Hogan's more detailed table is reproduced in the Appendix at pp. 118-119.
14. DOUGLAS, *AN ALMANAC OF LIBERTY* 355 (1955).
15. *Hearings on H.R. 762 Before Subcommittee No. 5 of the House Committee on the Judiciary*, 84th Cong., 1st Sess. at 99 (1955).
16. *Ibid.* at 202-211.
17. See Appendix, p. 105.
18. *Hearings on H.R. 762 Before Subcommittee No. 5 of the House Committee on the Judiciary*, 84th Cong., 1st Sess. at 117 (1955).
19. *Ibid.* at 212.
20. *Ibid.* at 313.
21. *Ibid.* at 219-220.
22. *Ibid.* at 214-217.
23. *Ibid.* at 218.
24. Form used by the New York police in King's County.
25. New York Joint Legislative Committee to Study Illegal Interception of Communications.

26. *Ibid.*
27. *Ibid.*
28. *Ibid.*
29. *Ibid.*
30. Interview: New York plainclothesman.
31. *Ibid.*
32. NEW YORK CITY POLICE DEPARTMENT MANUAL OF PROCEDURE, art. 14, paras. 36-48.
33. REPORT OF SPECIAL INVESTIGATION BY THE DISTRICT ATTORNEY OF KING'S COUNTY AND THE DECEMBER 1949 GRAND JURY.
34. Interview with private specialist.
35. Interview: Julius Helfand.
36. REPORT OF SPECIAL INVESTIGATION BY THE DISTRICT ATTORNEY OF KING'S COUNTY AND THE DECEMBER 1949 GRAND JURY.
37. Testimony of Julius Helfand in King's County Court, Dec. 27, 1950, in connection with the Grand Jury presentment.
38. Interview: Julius Helfand.
39. Interviews.
40. Interview: former plainclothesman.
41. REPORT OF SPECIAL INVESTIGATION BY THE DISTRICT ATTORNEY OF KING'S COUNTY AND THE DECEMBER 1949 GRAND JURY.
42. NEW YORK CITY POLICE DEPARTMENT MANUAL OF PROCEDURE, art. 14, paras. 46-48.
43. Interview: New York plainclothesman.
44. Interviews: New York plainclothesman and telephone company employee.
45. Interview: former plainclothesman.
46. *Hearings on H.R. 408 Before Subcommittee No. 3 of the House Committee on the Judiciary*, 83d Cong., 1st Sess. at 37 (1953).
47. Interviews: New York County District Attorney's office.
48. Interview: former telephone company employee.
49. Interview: former plainclothesman.
50. Interviews: King's County District Attorney's office.
51. *Ibid.*
52. Interview: former plainclothesman.
53. New York Joint Legislative Committee to Study Illegal Interception of Communications.
54. Interview: former plainclothesman.
55. Interviews: members of the New York City Police Department and members of the New York County District Attorney's office.
56. *Ibid.*
57. DANFORTH AND HORAN, *THE D.A.'s MAN* (1957).
58. Interview: one of the special agents who made the installation.
59. DANFORTH AND HORAN, *THE D.A.'s MAN* 158 (1957).

60. *Ibid.* © 1957 by Harold R. Danforth and James D. Horan. Used by permission of Crown Publishers, Inc.
61. Interviews: members of the New York City Police Department and members of the New York County District Attorney's office.
62. Interviews: members of the New York City Police Department and New York County District Attorney's office in 1957; public release of New York legislature's "watch-dog committee," *The New York Times*, May 15, 1957.
63. Public release of New York legislature's "watch-dog committee," *The New York Times*, May 15, 1957.
64. *Ibid.*
65. N.Y. CONSOL. LAWS ANN., CODE OF CRIM. PROC. § 813a (McKinney 1958).
66. N.Y. CONSOL. LAWS ANN., CODE OF CRIM. PROC. § 813a and b (McKinney 1958).
67. Report of the Director of Licenses in August, 1956.
68. *Ibid.*
69. *People v. Appelbaum*, 227 App. Div. 43, 97 N.Y.S.2d 807 (1950), *aff'd*, 301 N.Y. 738, 95 N.E.2d 410 (1950).
70. *Ibid.*
71. Interviews: New York private detectives.
72. Interviews: New York private detectives; New York Joint Legislative Committee to Study Illegal Interception of Communications.
73. *Ibid.*
74. *Ibid.*
75. Transcript of testimony in *People v. Broady* (Gen. Sess. N.Y. 1955).
76. Interview: former telephone company employee.
77. New York Joint Legislative Committee to Study Illegal Interception of Communications.
78. *People v. Appelbaum*, 227 App. Div. 43, 97 N.Y.S.2d 807 (1950), *aff'd* 301 N.Y. 738, 95 N.E.2d 410 (1950).
79. New York Joint Legislative Committee to Study Illegal Interception of Communications; interviews: members of the New York City Police Department and New York County District Attorney's office.
80. *Ibid.*
81. *United States v. Gruber*, 123 F.2d 307 (2d Cir. 1941).
82. New York Joint Legislative Committee to Study Illegal Interception of Communications; *The New York Times*, Feb. 18, 1955.
83. *Ibid.*
84. Transcript of testimony in *People v. Broady* (Gen. Sess. N.Y. 1955).

85. Interview: special investigator for the New York Anti-Crime Committee; New York Joint Legislative Committee to Study Illegal Interception of Communications.
86. *Ibid.*
87. Transcript of testimony in *People v. Broady* (Gen. Sess. N.Y. 1955).
88. Transcript of testimony in *People v. Broady* (Gen. Sess. N.Y. 1955); New York Joint Legislative Committee to Study Illegal Interception of Communications.
89. Transcript of testimony in *People v. Broady* (Gen. Sess. N.Y. 1955).
90. *Ibid.*
91. *Ibid.*
92. Interview: special investigator of the New York Anti-Crime Committee; New York Joint Legislative Committee to Study Illegal Interception of Communications.
93. New York Joint Legislative Committee to Study Illegal Interception of Communications.
94. *The New York Times*, March 5, 1955.
95. Transcript of testimony in *People v. Broady* (Gen. Sess. N.Y. 1955).
96. *Ibid.*
97. *Ibid.*
98. *Ibid.*
99. New York Joint Legislative Committee to Study Illegal Interception of Communications.
100. *Ibid.*
101. *Ibid.*
102. *Ibid.*
103. Transcript of testimony in *People v. Broady* (Gen. Sess. N.Y. 1955).
104. Interview: New York private detective.
105. New York Joint Legislative Committee to Study Illegal Interception of Communications.
106. *Ibid.*
107. *United States v. Gris*, 146 F. Supp. 293 (S.D.N.Y. 1956).
108. *United States v. Gris*, 247 F.2d 860 (2d Cir. 1957).
109. New York Joint Legislative Committee to Study Illegal Interception of Communications.
110. Interview: special investigator employed by the New York Anti-Crime Committee.
111. New York Joint Legislative Committee to Study Illegal Interception of Communications; *The New York Times*, Dec. 23, 1957.

112. REPORT OF THE NEW YORK JOINT LEGISLATIVE COMMITTEE TO STUDY ILLEGAL INTERCEPTION OF COMMUNICATIONS 18 (1957).
113. *Ibid.* at 26.
114. *Ibid.* at 28.
115. *Ibid.* at 11.
116. Public release by the office of the Governor of the State of New York, dated April 12, 1958.
117. *Ibid.*
118. Material supplied by District Attorney Silver.
119. *Ibid.*

NEW ORLEANS, BATON ROUGE

1. LA. REV. STAT. ANN., tit. 14, § 322 (West 1950).
2. Interviews in 1957.
3. *Ibid.*
4. Interviews: members of other law-enforcement agencies of Louisiana and former special investigators for the Special Citizens Investigating Committee of the Commission Council of New Orleans.
5. Interviews: officials of the New Orleans and Baton Rouge law-enforcement agencies.
6. Interviews: high-ranking members of New Orleans and Baton Rouge law-enforcement agencies.
7. Interviews: high-ranking members of New Orleans, Baton Rouge, and Louisiana state law-enforcement agencies.
8. *Ibid.*
9. Interviews: high-ranking members of Baton Rouge and Louisiana state law-enforcement agencies.
10. Interview: chief investigator for the committee.
11. *Ibid.*
12. REPORT OF THE SPECIAL CITIZENS INVESTIGATING COMMITTEE OF THE COMMISSION COUNCIL OF NEW ORLEANS.
13. *Ibid.*
14. REPORT OF THE SPECIAL CITIZENS INVESTIGATING COMMITTEE OF THE COMMISSION COUNCIL OF NEW ORLEANS; interviews: former high-ranking members of the state police who participated in this activity.
15. Interview: District Attorney of the parish of Orleans.
16. Interviews: high-ranking members of the law-enforcement agencies in Baton Rouge.
17. *Ibid.*
18. *Ibid.*
19. Interview: Attorney General of Louisiana.
20. Interviews: former and present high-ranking members of the state police.

21. Interview: Colonel Francis Grevemberg.
22. *Ibid.*
23. Interview: Colonel Grevemberg; transcript of recorded conversation in files of Metropolitan Crime Commission of New Orleans.
24. Interviews: high-ranking members of the sheriff's office.
25. Interviews: high-ranking members of the sheriff's office and a private detective.
26. Interviews: high-ranking members of the law-enforcement agencies in New Orleans and Baton Rouge.
27. Transcript of testimony in United States v. Massicot (Dist. Ct. E.D.La., Crim. No. 25,956, 1957).
28. *Ibid.*
29. Massicot v. United States, 254 F.2d 58 (5th Cir. 1958).
30. Interview: Sidney J. Massicot.
31. Interview: private detective.
32. *Ibid.*
33. Interview: investigator for the Metropolitan Crime Commission of New Orleans.
34. Interview: investigator for the Special Citizens Investigating Committee of the Commission Council of New Orleans; REPORT OF THE SPECIAL CITIZENS INVESTIGATING COMMITTEE OF THE COMMISSION COUNCIL OF NEW ORLEANS.

BOSTON

1. MASS. ANN. LAWS, ch. 272, § 99 (Michie 1956).
2. *Ibid.*
3. See pp. 161-162.
4. Boston Herald, Nov. 15, 1919, p. 10, col. 2.
5. Boston Herald, Feb. 10, 1920, p. 13.
6. REPORT OF THE NEW YORK JOINT LEGISLATIVE COMMITTEE TO STUDY ILLEGAL INTERCEPTION OF COMMUNICATIONS 62 (1957).
7. Interviews: high-ranking members of Boston and Massachusetts law-enforcement agencies.
8. Interviews: high-ranking members of Massachusetts law-enforcement agencies.
9. The Pilot, May 8, 1954.
10. Exchange between director of this study and Boston District Attorney.
11. REPORT OF THE SPECIAL COMMISSION REVIVED AND CONTINUED FOR THE PURPOSE OF INVESTIGATING ORGANIZED CRIME AND OTHER RELATED MATTERS, April, 1957.
12. *Ibid.*
13. Interviews: high-ranking members of the state police.

14. Interviews: high-ranking members of the Attorney General's office.
15. *Ibid.*
16. Interviews: high-ranking members of the state police.
17. Interviews: high-ranking members of the state police and New York private specialist.
18. *Ibid.*
19. Interviews: high-ranking members of the state police and the Attorney General's office.
20. Interviews: high-ranking members of the state police and New York private specialist.
21. Interview: New York private specialist.
22. Interview: Boston private wiretapper.
23. REPORT OF THE SPECIAL COMMISSION, *supra* note 11.
24. Interview: Boston private wiretapper; REPORT OF THE SPECIAL COMMISSION, *supra* note 11.
25. Interview: New York private wiretapper; REPORT OF THE SPECIAL COMMISSION, *supra* note 11.
26. REPORT OF THE SPECIAL COMMISSION, *supra* note 11.

PROHIBITION JURISDICTIONS

SAN FRANCISCO, LOS ANGELES

1. Interviews: former high-ranking members of the San Francisco Police Department.
2. *Ibid.*
3. *Ibid.*
4. Interviews: high-ranking members of the San Francisco Police Department and Los Angeles and San Francisco private wiretapping specialists.
5. *Ibid.*
6. Interviews: former high-ranking members of the San Francisco Police Department.
7. Interviews: high-ranking members of the San Francisco Police Department.
8. Interviews: members of the San Francisco District Attorney's office.
9. *Ibid.*
10. *Ibid.*
11. *Ibid.*
12. Interviews: members of the District Attorney's office and San Francisco electronics technician.
13. Interviews: high-ranking members of the CIA Division.
14. *Ibid.*

15. Interviews: former Los Angeles police wiretappers.
16. Interview: Jim Vaus; VAUS, WHY I QUIT SYNDICATED CRIME.
17. Interview: private specialist.
18. Interview: Jim Vaus; VAUS, WHY I QUIT SYNDICATED CRIME.
19. Interview: Jim Vaus.
20. Interview: high-ranking federal law-enforcement officer in California.
21. *People v. Mallotte*, 46 Cal. 2d 59 (1956).
22. *People v. Fratiano*, 132 Cal. App. 2d 610, 282 P.2d 1002 (1955).
23. Hearings before the Senate Judiciary Committee of California (1956).
24. Interview: individual involved.
25. Interviews: individuals involved.
26. Interviews: members of the Los Angeles District Attorney's office.
27. *Ibid.*
28. CAL. ANN. CODES, PENAL CODE § 653 (h) (West 1956).
29. Hearings before the Senate Judiciary Committee of California (1956).
30. CAL. ANN. CODES, PENAL CODE § 653 (h) (West 1956).
31. Interview: Lt. Wellpott.
32. *Ibid.*
33. *Ibid.*
34. *Ibid.*
35. *Ibid.*
36. Interview: Lt. Wellpott; intradepartmental correspondence, Los Angeles Police Department, between Lt. Wellpott and W. A. Wor-ton, Chief of Police, Aug. 23, 1949.
37. *Ibid.*
38. Jim Vaus; VAUS, WHY I QUIT SYNDICATED CRIME.
39. Interview: Jim Vaus.
40. Interview: Jim Vaus; VAUS, WHY I QUIT SYNDICATED CRIME.
41. THIRD PROGRESS REPORT OF THE SPECIAL CRIME STUDY COMMISSION ON ORGANIZED CRIME IN CALIFORNIA 30 (1950).
42. Interviews: members of California law-enforcement agencies.
43. *People v. Cahan*, 44 Cal. 2d 434 (1955).
44. *Irvine v. People of California*, 347 U.S. 128 (1953).
45. *Rochin v. People of California*, 342 U.S. 165 (1952).
46. *Wolf v. Colorado*, 338 U.S. 35 (1949).
47. Hearings before the Senate Judiciary Committee of California (1956).
48. *Ibid.*
49. *Ibid.*
50. *Ibid.*
51. *Ibid.*

52. *Ibid.*
53. *Ibid.*
54. REPORT OF THE CALIFORNIA SENATE JUDICIARY COMMITTEE ON THE INTERCEPTION OF MESSAGES BY THE USE OF ELECTRONIC AND OTHER DEVICES (1957).
55. *Ibid.*
56. Interviews: members of California law-enforcement agencies who participated in this activity.
57. Interview: police chief involved.
58. Interviews: high-ranking members of California law-enforcement agencies.
59. Interviews: high-ranking members of the District Attorney's office in Los Angeles.
60. Interviews: high-ranking members of law-enforcement agencies in San Francisco.
61. *People v. Tarantino*, 45 Cal. 2d 590 (1955).
62. Interviews: high-ranking members of the District Attorney's office in San Francisco.
63. *Ibid.*
64. Interviews: high-ranking members of law-enforcement agencies in Los Angeles and San Francisco; Hearings before Senate Judiciary Committee of California (1956).
65. Interview: law-enforcement officer involved.
66. Interview: Russell Mason; Hearings before the Senate Judiciary Committee of California (1956).
67. Hearings before the Senate Judiciary Committee of California (1956).
68. Interviews: high-ranking members of California law-enforcement agencies.
69. *Ibid.*
70. *Ibid.*
71. *Ibid.*
72. San Francisco News, Saturday Magazine, Sept. 14, 1957, p. 2T.
73. Interview: special investigator.
74. Interview: Harold Lipset.
75. Testimony before the Grand Jury of the County of Los Angeles, California, in *People of the State of California v. Robert Harrison* (No. 190,871 1957).

CHICAGO

1. ILL. REV. STAT. ch. 134, § 16 (Burdette Smith 1953).
2. ILL. REV. STAT. ch. 134, § 15a (Burdette Smith 1953).
3. Interviews: high-ranking members of the Chicago Police Department and Cook County State's Attorney's office.

4. Interview: John Gutneckt and members of the Cook County State's Attorney's office.
5. Interview: John Gutneckt.
6. Interviews: members of the Chicago Police Department.
7. Interviews: high-ranking members of the Chicago Police Department.
8. *Ibid.*
9. *Ibid.*
10. *Ibid.*
11. *Ibid.*
12. *Ibid.*
13. *Ibid.*
14. *Ibid.*
15. *Ibid.*
16. *Ibid.*
17. *Ibid.*
18. *Ibid.*
19. *Ibid.*
20. Interviews: high-ranking members of the Cook County State's Attorney's office.
21. Interviews: special investigators for the Cook County State's Attorney's office.
22. Interviews: high-ranking members of the Chicago Police Department.
23. ILL. ANN. STAT., ch. 38, § 206.1 (Smith-Hurd 1958).
24. Interviews: high-ranking members of the Cook County State's Attorney's office.
25. Interviews: members of Chicago law-enforcement agencies.
26. Interviews: high-ranking members of the Chicago Police Department.
27. *Ibid.*
28. Interviews: Chicago private detectives.
29. *Ibid.*
30. *Ibid.*
31. *Ibid.*
32. Interviews: Chicago private detectives and private wiretapping specialists.
33. *Ibid.*
34. *Ibid.*
35. *Ibid.*
36. *Ibid.*
37. Interviews: high-ranking members of the Chicago Police Department and representatives of certain Chicago gamblers.

38. *Ibid.*39. *Ibid.*

VIRGIN JURISDICTIONS

PHILADELPHIA

1. PA. STAT. ANN., tit. 15, § 2443 (Purdon's 1958).
2. Interviews: members of the Philadelphia Police Department.
3. *Comm. v. Chait*, 176 Pa. Super. 318 (1954).
4. *Benanti v. U.S.*, 355 U.S. 196 (1957).
5. Interviews: members of Philadelphia law-enforcement agencies.
6. *Ibid.*
7. Interviews: members of the Philadelphia Police Department.
8. Interviews: members of the Philadelphia Police Department; Report of the Intelligence Unit of the Detective Bureau to the Police Commissioner in 1957.
9. Interviews: members of the Philadelphia Police Department; reports of the various units to the Commissioner in 1957.
10. Interviews: members of the Philadelphia District Attorney's office.
11. Interviews: members of the Philadelphia Police Department and members of the Philadelphia District Attorney's office.
12. Interviews: members of the Philadelphia Police Department.
13. *Ibid.*
14. *Ibid.*
15. *Ibid.*
16. Interviews: members of the Philadelphia Police Department and private Philadelphia electrical eavesdropping technicians.
17. Interviews: members of the Philadelphia Police Department.
18. Interviews: members of the Philadelphia Police Department and members of the Philadelphia District Attorney's office.
19. *Ibid.*
20. *Hearings on H.R. 762 Before Subcommittee No. 5 of the House Committee on the Judiciary*, 84th Cong., 1st Sess. (1955).
21. Interviews: members of the Philadelphia Police Department and the Police Commissioner of Philadelphia.
22. Interviews: members of the Philadelphia Police Department.
23. Interviews: members of the Philadelphia Police Department; written statements filed with the Police Commissioner of Philadelphia in 1957.
24. Interviews: members of the Philadelphia Police Department.
25. *Ibid.*
26. Interviews: members of the Philadelphia Police Department and the high-ranking police officer involved.
27. Interviews: members of the Philadelphia Police Department.
28. *Ibid.*

29. Interview: members of the Philadelphia Police Department and members of the Philadelphia District Attorney's office.
30. *Ibid.*
31. Interviews: members of the Philadelphia Police Department.
32. *Ibid.*
33. Interviews: members of the Philadelphia Police Department and members of the Philadelphia District Attorney's office.
34. *Ibid.*
35. *Ibid.*
36. Interviews: members of the Philadelphia Police Department.
37. *Ibid.*
38. Philadelphia Inquirer, July 10, 11, 12, 13, 1956.
39. Interview: American Civil Liberties Union of Philadelphia.
40. Interview: District Attorney of Philadelphia.
41. Interview: American Civil Liberties Union of Philadelphia.
42. *Ibid.*
43. Interview: District Attorney of Philadelphia.
44. Interview: newspaper columnist; Evening Bulletin, September 25, 1955.
45. Interview: American Civil Liberties Union of Philadelphia.
46. Interviews: members of Philadelphia law-enforcement agencies.
47. Interviews: members of the Philadelphia District Attorney's office.
48. Interviews: Philadelphia judges.
49. Interviews: Philadelphia judges, members of the Philadelphia Police Department, and members of the Philadelphia District Attorney's office.
50. Interviews: members of Philadelphia law-enforcement agencies.
51. *Ibid.*
52. Interviews: members of the Philadelphia Police Department.
53. Interviews: members of the Philadelphia District Attorney's office.
54. Interviews: members of law-enforcement agencies of Philadelphia.
55. Interviews: members of the Philadelphia Police Department and members of the Philadelphia District Attorney's office.
56. Interviews: judge involved and members of the Philadelphia District Attorney's office.
57. Interviews: Philadelphia private detectives; investigation by the Philadelphia District Attorney's office of wiretapping practices of Philadelphia private detectives in 1957.
58. *Ibid.*
59. Interviews: private detective involved; investigation by the Philadelphia District Attorney's office of wiretapping practices of Philadelphia private detectives in 1957.
60. *Ibid.*
61. *Ibid.*

62. Interview: private electrical specialist employed by the manufacturer.
63. Interviews: the private detective involved; investigation by the Philadelphia District Attorney's office of wiretapping practices of Philadelphia private detectives in 1957.
64. *Ibid.*
65. *Ibid.*
66. Interview: distributor; investigation by the Philadelphia District Attorney's office of Philadelphia of wiretapping practices of Philadelphia private detectives in 1957.
67. Interviews: pocket recorder representatives; investigation by the Philadelphia District Attorney's office of wiretapping practices of Philadelphia private detectives in 1957.
68. Interview: Philadelphia private detective.
69. *Ibid.*
70. *Ibid.*
71. *Ibid.*
72. *Ibid.*
73. *Ibid.*
74. *Ibid.*
75. *Ibid.*
76. *Ibid.*
77. Interview: Philadelphia private detective involved; investigation by the Philadelphia District Attorney's office of wiretapping practices of Philadelphia private detectives in 1957.

LAS VEGAS

1. In 1957 the Nevada legislature enacted a law which prohibited wiretapping except in the case of investigations by law-enforcement agencies of certain specified crimes where a court order had been obtained. NEV. STATS., ch. 242 (1957).
2. Interviews: members of Las Vegas law-enforcement agencies.
3. Interviews: members of the Las Vegas District Attorney's office.
4. Interviews: members of the Las Vegas sheriff's office.
5. Interviews: members of the Las Vegas Police Department.
6. *Ibid.*
7. *Ibid.*
8. Interviews: Las Vegas law-enforcement agencies.
9. Interviews: members of Las Vegas law-enforcement agencies. Interview: representative of the Southern Nevada Telephone Company.
10. Interviews: members of Las Vegas Police Department. Interview: representative of the Southern Nevada Telephone Company.
11. Interviews: members of Las Vegas law-enforcement agencies.

12. *Ibid.*
13. Interviews: members of the Las Vegas Police Department.
14. Interviews: members of the Las Vegas District Attorney's office.
Interview: publisher of the Las Vegas Sun.
15. *Ibid.*
16. Interview: Las Vegas private detective.
17. *Ibid.*
18. *Ibid.*
19. Interviews: representatives of the Las Vegas Casino.
20. Interviews: representatives of the casino in question.
21. Interview: representative of the Southern Nevada Telephone Company.

WIRETAPPING IN ENGLAND

1. The material in this section is taken from the REPORT OF THE COMMITTEE OF PRIVY COUNCILLORS APPOINTED TO INQUIRE INTO THE INTERCEPTION OF COMMUNICATIONS presented to the Parliament by the Prime Minister in October, 1957. A general review of wire-tapping laws and practices in foreign countries has been prepared by William H. Courch, Chief, American-British Law Division of the Library of Congress, and is contained in the United States Government publication: *Wiretapping, Eavesdropping and the Bill of Rights, the Hearings on S. Res. 234 Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 85th Cong., 2d Sess. (appendix to hearing of May 20, 1958). The countries included are Great Britain, Canada, Australia, Ceylon, India, New Zealand, Pakistan, Union of South Africa, Burma, Republic of Ireland, Israel, Austria, Belgium, France, Germany, Italy, Denmark, Sweden, Norway, and Finland.
2. REPORT OF THE COMMITTEE OF PRIVY COUNCILLORS APPOINTED TO INQUIRE INTO THE INTERCEPTION OF COMMUNICATIONS, para. 103 (1957).
3. *Ibid.* at para. 123.
4. APPENDIX TO THE REPORT OF THE COMMITTEE OF PRIVY COUNCILLORS APPOINTED TO INQUIRE INTO THE INTERCEPTION OF COMMUNICATIONS.
5. REPORT OF THE COMMITTEE OF PRIVY COUNCILLORS APPOINTED TO INQUIRE INTO THE INTERCEPTION OF COMMUNICATIONS, paras. 129-131.
6. *Ibid.* at para. 150.
7. *Ibid.* at para. 151.
8. *Ibid.* at para. 175.
9. REV. STAT. § 4026 (1872), 39 U.S.C. 700 (1952).
10. REV. STAT. § 3990 (1880), 39 U.S.C. 498 (1952).

PART TWO

1. Special thanks are due to Mr. C. R. Kraus, of the Pennsylvania Bell Telephone Company, for enlightening me on these devices.
2. R. C. Coile, "Parabolic Sound Concentration," *Journal of the Society of Motion Picture Engineers*, 51 (Sept. 1948), pp. 298-311.
3. This is not the accepted definition of beam width, but will suffice here for descriptive purposes.
4. W. P. Mason and R. N. Marshall, "A Tubular Directional Microphone," *Journal of the Acoustical Society of America*, 10 (Jan., 1939), pp. 206-215.
5. U.S. Patent No. 2,733,597, H. C. Hardy, inventor, Feb., 1956, assigned to Armour Research Foundation.
6. Leo L. Beranek, Appendix C of *Eavesdropping and Wiretapping, Report of the New York Joint Legislative Committee to Study Illegal Interception of Communications*. Legislative Document No. 53, Albany, New York, 1956.
7. Cyril M. Harris, *Handbook of Noise Control* (New York, 1957), pp. 3-1-3-4.
8. Chandler Stewart, "Proposed Massless Remote Vibration Pickup," *Journal of the Acoustical Society of America*, 30 (July, 1958), pp. 644-645.
9. See, for example, the fascinating book by Roland Gelatt, *The Fabulous Phonograph* (Philadelphia, 1955).
10. A detective story dealing with such a situation is Erle Stanley Gardner, *The Case of the Green-Eyed Sister* (New York, 1953).
11. V. K. Zworykin and G. A. Morton, *Television*, 2d ed. (New York, 1954).

PART THREE

1. 4 COMMENTARIES ch. 13, § 5 (6).
2. See Rosenzweig, *The Law of Wiretapping*, 32 CORNELL L. REV. 514 (1947).
3. 277 U.S. 438 (1928).
4. *Olmstead v. United States*, 19 F.2d 843 (9th Cir. 1927). The majority upheld the admission of the wiretap evidence upon an analogy to normal eavesdropping. Judge Rudkin's dissent relied upon the cases prohibiting searches and seizures from the mails without a warrant. Cf. the section dealing with England in this report.
5. A short summary of congressional activity between 1928 and 1934 may be found in Westin, *The Wire-Tapping Problem: An Anal-*

ysis and a Legislative Proposal, 52 COLUM. L. REV. 165, 173-174 (1952).

6. *Ibid.* See also *Nardone v. United States*, 302 U.S. 379, 381-382 (1937).
7. 48 Stat. 1103 (1934), 47 U.S.C. § 605 (1946).
8. 48 Stat. 1100 (1934), 47 U.S.C. § 501 (1946).
9. *Weiss v. United States*, 308 U.S. 321 (1939).
10. 316 U.S. 129 (1942). See also 35 CAN. B. REV. 558 (1957).
11. For example, see *United States v. Yee Ping Jong*, 26 F. Supp. 69 (W.D. Pa. 1939), holding that a recording with the consent of one of the parties did not constitute an interception. *Contra*, *Polakoff v. United States*, 112 F.2d 888 (2d Cir. 1940). *Cf.* *United States v. Stephenson*, 121 F. Supp. 274 (D.C. 1954), holding that a recording of one's own call without the consent of the other party constituted an interception.
12. For example, see *Rathbun v. United States*, 236 F.2d 514 (10th Cir. 1956), *aff'd*, 355 U.S. 107 (1957), holding that listening over an extension with the consent of one party did not constitute an interception.
13. For example, see *United States v. Bookie*, 229 F.2d 130 (7th Cir. 1956), and *United States v. Pierce*, 124 F. Supp. 264 (N.D. Ohio 1954), holding that listening while party holds receiver in such a way as to allow overhearing did not constitute an interception. *Cf.* *United States v. Hill*, 149 F. Supp. 83 (S.D.N.Y. 1957), holding that a recording made in this manner was an interception.
14. See cases cited notes 11, 12, 13 *supra*. Additional cases which have held that there was no interception are *United States v. White*, 228 F.2d 832 (7th Cir. 1956); *Flanders v. United States*, 222 F.2d 163 (6th Cir. 1955); *United States v. Guller*, 101 F. Supp. 176 (E.D. Pa. 1951); *United States v. Lewis*, 87 F. Supp. 970 (D.C. 1950); *United States v. Sullivan*, 116 F. Supp. 480 (D.C. 1953). Additional cases *contra* are *Reitmeister v. Reitmeister*, 162 F.2d 691 (2d Cir. 1947); *United States v. Fallon*, 112 F.2d 894 (2d Cir. 1940). These cases have been commented upon extensively in the law reviews. See comment on *Polakoff v. United States*, note 11 *supra*, in 8 U. CHI. L. REV. 346 (1941); comment on *United States v. Lewis*, *supra*, in 36 VA. L. REV. 543 (1950); comment on *United States v. Sullivan*, *supra*, in 38 MINN. L. REV. 673 (1954); and comment on *United States v. Stephenson*, note 11 *supra*, in 53 MICH. L. REV. 623 (1955).
15. Huxman, J.: "We do not mean to say that violation of the 'Wire Tapping Act' may not result from listening in on extension telephones. Whether such listening in constitutes a violation of the

- Act would depend on where the extension phone was attached." Rathbun v. United States, 236 F.2d 514, 517 (10th Cir. 1956).
16. Rathbun v. United States, 355 U.S. 107 (1957).
 17. Schwartz, *On Current Proposals to Legalize Wiretapping*, 103 U. PA. L. REV. 157, 166 (1954).
 18. Cases cited notes 11, 12, 13, 14 *supra*.
 19. 355 U.S. 107 (1957).
 20. Warren, C. J.: "It has been conceded by those who believe the conduct here violates Section 605 that either party may record the conversation and publish it. . . . We see no difference between that sort of action and permitting an outsider to use an extension telephone for the same purpose." 355 U.S. at 110-11. The opinion cites language from Polakoff v. United States, 112 F.2d 888 (2d Cir. 1940), as well as the regulations of the Federal Communications Commission. In the latter instance, reference is made to *In the Matter of Use of Recording Devices in Connection with Telephone Service*, 11 F.C.C. 1033 (1947). At page 1053 of that report, the conclusion of the Commission regarding tariffs which preclude recording is set forth as follows:

In view of our conclusion that under certain conditions, the use of recording devices should be permitted in connection with interstate and foreign message toll telephone service, it is our further conclusion that insofar as any tariff regulations on file with us have the effect of barring such use of recording devices, such tariff regulations are unjust and unreasonable, and therefore unlawful under the provisions of Section 201 of the Commerce Act.

The above hearing led to the order of November 26, 1947, which required an automatic sound signal when calls were being recorded. The order, as modified on May 20, 1948, requires that the warning device sound not less than twelve seconds and not more than eighteen seconds apart. The order is limited to "interstate and foreign message toll telephone service." 12 Fed. Reg. 8442 (1947) and 13 Fed. Reg. 2969 (1948).

The opinion in the Benanti case does not indicate that a warning device was being sounded, and presumably it was not. However, failure to employ such a device would appear to be nothing more than a violation of the telephone companies' tariff as required by the above orders.

The opinion also does not mention *United States v. Stephenson*, 121 F. Supp. 274 (D.C. 1954), holding that such a recording constituted an interception within § 605.

21. *State v. Giardina*, 27 N.J. 313, 142 A.2d 609 (1958). *Cf. United States v. Gruber*, 123 F.2d 307 (2d Cir. 1941); *People v. Appelbaum*, 277 App. Div. 43, 97 N.Y.S.2d 807 (1950).
22. 87 F. Supp. 970 (D.C. 1950).
23. 184 F.2d 394 (D.C. Cir. 1950).
24. *Cf. People v. Kelly*, 22 C.2d 169, 137 P.2d 1 (1943). In this case, the majority relied upon *Goldstein v. United States*, 316 U.S. 114 (1942), which is discussed *infra* in the text.
25. 302 U.S. 379 (1937).
26. Hoover, *Rejoinder*, 58 YALE L.J. 422, 423 (1949).
27. Helfeld, *A Study of Justice Department Policies on Wire Tapping*, 9 LAW. GUILD REV. 57, 60 (1949).
28. *Id.* at 61. *Cf. Hoover, Rejoinder*, 58 YALE L.J. 422, 424 (1949).
29. Helfeld, *supra* note 27, at 62.
30. Statement of Warren Olney, Assistant Attorney General, *Hearings on H.R. 762, et al., Before Subcommittee No. 5 of the House Committee on the Judiciary*, 84th Cong., 1st Sess., at pp. 33-35 (1955).
31. *Weiss v. United States*, 308 U.S. 321 (1939).
32. 344 U.S. 199, 201 (1952).
33. The state statutes authorizing law-enforcement tapping are discussed in detail in the text, *infra*.
34. 355 U.S. 96 (1957).
35. Warren, C. J.: "... we find that Congress, setting out a prohibition in plain terms, did not mean to allow state legislation which would contradict that section and that policy." 355 U.S. at 105.
36. Presumably the United States Attorney General's opinions concerning federal tapping could be applied to state officers also.
37. Gerhart, *Let's Take the Hypocrisy Out of Wiretapping*, 30 N.Y.B.B. 268, 272-273 (1958).
38. *In re Tel. Comm.*, 170 N.Y.S.2d 84 (1958); *People v. Dinan*, 172 N.Y.S.2d 496 (1958); *Burack v. State Liquor Auth. of N.Y.*, 160 F. Supp. 161 (E.D.N.Y. 1958). See also Gerhart, *supra* note 37, and Williams, *Wiretapping Should be Liberalized*, 30 N.Y.B.B. 261 (1958).
39. 302 U.S. 379 (1937).
40. *Id.* at 381-83 (1937); see also Westin, *The Wire-Tapping Problem: An Analysis and a Legislative Proposal*, 52 COLUM. L. REV. 165, 174-175 (1952).
41. The Court of Appeals had sustained the admission of the evidence because it felt that § 605 did not meet the requirement of "direct legislation." 90 F.2d 630, 632 (2d Cir. 1937).

42. For a discussion of the exclusionary rule as a deterrent, see Note, *Judicial Control of Illegal Search and Seizure*, 58 YALE L.J. 144 (1948).
43. 308 U.S. 338 (1939).
44. Cf. *Benanti v. United States*, 355 U.S. 96 (1957).
45. 316 U.S. 114 (1942). Cf. *Manger v. State*, 214 Md. 71, 133 A.2d 78 (1957), and comment thereon in 17 MD. L. REV. 357 (1957).
46. 355 U.S. 96 (1957).
47. Medina, J.: "We can find no tenable distinction between the rule of policy governing the admissibility in federal courts of evidence illegally obtained by state officers through an unlawful search and seizure, without participation or collusion by federal officials, and the rule of policy which should govern the admissibility of evidence obtained by state officials under similar circumstances in violation of the federal statute against wiretapping." *Benanti v. United States*, 244 F.2d 389, 393 (2d Cir. 1957).
 Warren, C. J.: ". . . it is neither necessary or appropriate to discuss by analogy distinctions suggested to be applicable to the Fourth Amendment." *United States v. Benanti*, 355 U.S. at 102 (1957).
48. In *Goldstein* the majority opinion written by Justice Roberts did not reach the question of the legality of the use involved. *Goldstein v. United States*, 316 U.S. 114, 122 (1942). The government's contention was that the statute "was not intended to reach the use of the contents of the messages by federal officers for obtaining evidence. . . ." This is a somewhat difficult position to maintain in view of the *Nardone* cases. *Nardone v. United States*, 302 U.S. 379 (1937); 308 U.S. 338 (1939). The dissent in *Goldstein* relies upon the illegality of the use. 316 U.S. at 123 *et seq.*
49. Murphy, J. (dissenting): "The rule that evidence obtained by a violation of § 605 is inadmissible is not a remedy for the sender; it is the obedient answer to the Congressional command that society shall not be plagued with such practices as wiretapping." *Goldstein v. United States*, 316 U.S. 114, 127 (1942).
50. *People v. Stemmer*, 336 U.S. 963 (1949), *affirming* 298 N.Y. 728, 83 N.E.2d 141 (1948).
51. 344 U.S. 199 (1952).
52. Minton, J.: "The problem under § 605 is somewhat different because the introduction of the intercepted communications would itself be a violation of the statute, but in the absence of an expression by Congress, this is simply an additional factor for a state to consider in formulating a rule of evidence for use in its own courts." 344 U.S. at 201.
53. 355 U.S. 96 (1957).

54. 344 U.S. 199 (1952). To the effect that the Benanti case undermines the Schwartz case, see Comment, 26 GEO. WASH. L. REV. 465 (1958).
55. Frankfurter, J.: "Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guarantee of the Fourteenth Amendment." *Wolf v. Colorado*, 338 U.S. 25, 28 (1949). It has twice been held that the states need not adopt an exclusionary rule. *Wolf v. Colorado*, *supra*; *Irvine v. California*, 347 U.S. 128 (1954). For a criticism of the position see ROBERTS, *THE COURT AND THE CONSTITUTION* 84 *et seq.* (1951). See also Garfinkel, *The Fourteenth Amendment and State Criminal Proceedings*, 41 CALIF. L. REV. 672 (1953). Cf. *Rochin v. California*, 342 U.S. 165 (1952), wherein it was held that it violated due process to admit two capsules of morphine which had been forced from the defendant's stomach by an emetic solution.
56. *United States v. Gris*, 247 F.2d 860 (2d Cir. 1957).
57. *Id.* at 864. If such be the case, an argument of presumed legislative intent might prevail. Cf. the theory of Chief Justice Hughes in *Sorrells v. United States*, 287 U.S. 435 (1932).
58. *Nardone v. United States*, 302 U.S. 379 (1937).
59. Medina, J.: ". . . the statute does not itself enact a rule of evidence. Wiretap evidence is excluded by the federal courts in order to discourage persons from undertaking the proscribed activities in an effort to obtain evidence for use in those courts. . . . Where exclusion would not serve this purpose, the evidence is admitted." 247 F.2d at 864.
60. 244 F.2d 389 (2d Cir. 1957).
61. *Benanti v. United States*, 355 U.S. 96 (1957).
62. 316 U.S. 114 (1942).
63. Frankfurter, J.: "The burden is, of course, on the accused in the first instance to prove to the trial court's satisfaction that wiretapping was unlawfully employed." *Nardone v. United States*, 308 U.S. 338, 341 (1939). See also cases cited note 64 *infra*; *United States v. Coplon*, 185 F.2d 629, 636 (2d Cir. 1950).
64. *United States v. Frankfeld*, 100 F. Supp. 934 (Md. D. 1951); *United States v. Fujimoto*, 102 F. Supp. 890 (Hawaii D. 1952); *United States v. Flynn*, 103 F. Supp. 925 (S.D.N.Y. 1951). See Note, *Exclusion of Evidence Obtained by Wire Tapping: An Illusory Safeguard*, 61 YALE L.J. 1221 (1952), wherein it was stated that the Frankfeld case, *supra*, demonstrated the weakness of the rule of *Nardone v. United States*, 308 U.S. 338 (1939). Cf. Rosenzweig, *The Law of Wiretapping*, 32 CORNELL L.Q. 514, 539 (1947).
65. 308 U.S. 338, 341 (1939).

66. *United States v. Goldstein*, 120 F.2d 485 (2d Cir. 1941); *United States v. Coplon*, 185 F.2d 629 (2d Cir. 1950).
67. *United States v. Goldstein*, 120 F.2d 485, 488 (2d Cir. 1941).
68. *United States v. Coplon*, 88 F. Supp. 921 (S.D.N.Y. 1950).
69. *United States v. Coplon*, 185 F.2d 629, 637 (2d Cir. 1950). The case also holds that the defendant was unduly restricted in her attempt to prove that the "confidential informant" was in fact a wiretapper. Since the whole investigation had been set in motion by the "confidential informant," all evidence thereafter obtained would be fruit of the poison tree.
70. *United States v. Coplon*, 88 F. Supp. 921 (S.D.N.Y. 1950); *rev'd on other grounds*, 185 F.2d 629 (2d Cir. 1950); *United States v. Coplon*, 91 F. Supp. 867 (D.C. 1950), *rev'd on other grounds*, 191 F.2d 749 (D.C. Cir. 1951).
71. Judge Ryan's hearing upon the wiretapping problem in the New York prosecution of Judith Coplon lasted six weeks.
72. This is analogous to the normal procedure under the federal exclusionary rule in unlawful search and seizure cases. For an interesting discussion of the place of the motion in the development of the federal rules see Rosenzweig, *The Law of Wiretapping*, 32 CORNELL L.Q. 514, 518 *et seq.* (1947).
73. See cases cited note 64, *supra*. See also *United States v. Costello*, 145 F. Supp. 892 (S.D.N.Y. 1956), wherein Judge Palmieri dismissed without prejudice because he felt the long delay in the trial would unduly disrupt it. *Rev'd*, 247 F.2d 384 (2d Cir. 1957).
74. *United States v. Coplon*, 91 F. Supp. 867 (D.C. 1950), *rev'd*, 191 F.2d 749 (D.C. Cir. 1951). The reversal involved a constitutional problem so it does not necessarily mean that the question can be raised on such a motion absent these considerations.
75. *United States v. Lawrence*, 216 F.2d 570 (7th Cir. 1954).
76. *United States v. Gruber*, 39 F. Supp. 291 (S.D.N.Y. 1941), holding that § 605 and § 501 must be read together, and, as a result of such a reading, the statute is criminal. *United States v. Gruber*, 123 F.2d 307 (2d Cir. 1941), holding that the use of a "conference system," whereby Gruber heard calls between the New York and Chicago offices of the SEC, was an interception and divulgence by the telephone operator. This was true even though the operator did not hear the messages.
77. Letter and memorandum from Alan Lindsay, Executive Assistant, Criminal Division, *Hearings on H.R. 762 Before Subcommittee No. 5 of the House Committee on the Judiciary*, 84th Cong., 1st Sess. (1955).
78. *United States v. Gris*, 146 F. Supp. 293 (S.D.N.Y. 1956); 247 F.2d 860 (2d Cir. 1957); *Massengale v. United States*, 240 F.2d 781 (6th

- Cir. 1957); *Massicot v. United States*, 254 F.2d 58 (5th Cir. 1958); *Lipinski v. United States*, 251 F.2d 53 (10th Cir. 1958). See also the following newspaper accounts: the account of the indictment of James Hoffa, Bernard Brennan, and Bernard Spindel in the *Philadelphia Inquirer*, May 15, 1957; the account of the conviction of James Elkins and Raymond Clark, in the *Sunday Philadelphia Bulletin*, May 12, 1957, p. 24; and the story of the conviction of Henry Buescher in the *Camden Courier Post*, Jan. 24, 1958.
79. *United States v. Coplon*, 191 F.2d 749 (D.C. Cir. 1951). Cf. *Lanza v. N.Y.*, 3 N.Y.2d 92, 143 N.E.2d 772 (1957), commented on, 26 *FORDHAM L. REV.* 556 (1957).
 80. *United States v. Plisco*, 22 F. Supp. 242 (D.C. 1938). Cf. *People v. Dinan*, 172 N.Y.S.2d 496 (1958).
 81. *McGuire v. Amrein*, 101 F. Supp. 414 (D. Md. 1951); *Voci v. Farkas*, 144 F. Supp. 103 (E.D. Pa. 1956), 235 F.2d 48 (3d Cir. 1956); *Burack v. Liquor Auth. of N.Y.*, 160 F. Supp. 161 (E.D.-N.Y. 1958).
 82. *McGuire v. Amrein*, *supra* note 81.
 83. 342 U.S. 117 (1951).
 84. *Supra* note 81.
 85. *Voci v. Farkas*, 235 F.2d 48 (3d Cir. 1956).
 86. Cited note 81 *supra*.
 87. 355 U.S. 96 (1957).
 88. 350 U.S. 214 (1956).
 89. *Weeks v. United States*, 232 U.S. 383 (1914).
 90. *McNabb v. United States*, 318 U.S. 332 (1943); *Upshaw v. United States*, 335 U.S. 410 (1948); *Mallory v. United States*, 354 U.S. 449 (1957).
 91. 162 F.2d 691 (2d Cir. 1947).
 92. A summary of proposed legislation and the congressional action upon it may be found in 33 *CONG. DIG.* 140 *et seq.* (1954).
 93. For a comparison and a discussion of the two bills, see Note, *Wiretapping: The Hobbs and Walter Bills Compared*, 29 *GEO. L.J.* 889 (1941).
 94. A copy of the bill is set forth in *The New York Times*, Jan. 17, 1958, p. 13.
 95. For citations of the state statutes in existence in 1928, see *Olmstead v. United States*, 277 U.S. 438, 479 (1928).
 96. For example, see Westin, *The Wire-Tapping Problem: An Analysis and a Legislative Proposal*, 52 *COLUM. L. REV.* 165, 182 (1952), wherein it is said that statutes of the malicious injury type date back to the late 1800's; *State v. Behringer*, 19 *Ariz.* 502, 172, p. 660 (1918), wherein it was said that protection was extended to

- telephone lines and messages in 1913; CAL. ANN. CODES, PENAL CODE § 640, *Historical Note* (West 1955), wherein it is said that a similar extension took place in California in 1905; REPORT OF THE NEW YORK JOINT LEGISLATIVE COMMITTEE TO STUDY ILLEGAL INTERCEPTION OF COMMUNICATIONS, N.Y. Sess. Laws 1956 (McKinney), wherein it is said that the New York prohibitory statute was enacted in 1892. This statute was finally changed in 1957. NEW YORK PENAL LAW art. 73, § 738 (1957).
97. A good history and analysis of these state statutes is to be found in Rosenzweig, *The Law of Wiretapping*, 33 CORNELL L.Q. 73 *et seq.* (1947).
 98. Westin, *The Wire-Tapping Problem: An Analysis and a Legislative Proposal*, 52 COLUM. L. REV. at note 40.
 99. The STATE LAW INDEX, 1929-1930 (1932), at page 824, lists the following wiretap statutes: Colorado 1929 ch. 84, Montana 1929 ch. 66, New Jersey 1930 ch. 215, and New Mexico 1929 ch. 52. The STATE LAW INDEX, 1931-1932 (1934), at page 815, lists North Dakota 1931 ch. 127, and the STATE LAW INDEX, 1933-1934 (1936) lists Delaware 1933 ch. 206.
 100. *People v. Appelbaum*, 277 App. Div. 43, 97 N.Y.S.2d 807 (1950); *aff'd without opinion*, 301 N.Y. 738, 95 N.E.2d 410 (1950).
 101. *People v. Trieber*, 28 C.2d 657, 171 P.2d 1 (1946).
 102. Traynor, J.: "There is no learning of the contents of a communication 'fraudulently or clandestinely, or in any unauthorized manner' when one of the participants to the conversation consents or directs its overhearing or preservation." *People v. Malotte*, 46 C.2d 59, 292 P.2d 517, 520 (1956). See also *People v. Channel*, 107 Cal. App. 2d 192, 236 P.2d 654 (1951); *People v. Cahan*, 141 Cal. App. 2d 891, 297 P.2d 715 (1956); *People v. Dement*, 48 A.C. 604, 311 P.2d 505 (1957).
 103. See, for example, ALA. CODE tit. 48, § 417 (1940); DEL. CODE ANN. tit. 11, § 756 (West 1953); S.D. CODE § 13 4511 (1939). *Cf.* U.S.C. tit. 47, § 605 (1952).
 104. LA. REV. STAT. ANN. § 14 (West 1951); 322 OKLA. STAT. tit. 21, § 1757 (1951).
 105. The following states appear to have malicious injury statutes only: GEORGIA CODE ANN. § 26-8114 (1953); IND. STAT. ANN. § 10-4518 (1956); ME. REV. STAT. ch. 131, § 16 (1954); MO. ANN. STAT. § 560, 310 (1953); N.H. REV. LAWS ch. 442, § 3 (1942); S.C. CODE § 58-316 (1952); TEX. STAT., PENAL CODE § 1334 (1948); VT. STAT. § 9725 (1949); W. VA. CODE ANN. § 5970 (1955). See *State v. Tracy*, 100 N.H. 267, 125 A.2d 774 (1956), and authorities collected therein, to the effect that such statutes uniformly have been held not to cover wiretapping.

106. MASS. ANN. LAWS ch. 272, § 99 (Michie 1956).
107. N.Y. CONST. art. 1, § 12 (1938); N.Y. Sess. Laws 1957, ch. 879, § 1, amending CODE OF CRIM. PROC. § 813a. States which have recently enacted court order systems similar to New York's are MD. ANN. CODE art. 35, §§ 100-107 (1956 Supp.). NEV. REV. STAT. ch. 200, as amended 1957; ORE. REV. STAT. § 141.720 (1957).
108. To state the question does not, of course, provide an answer. The difficulties of acquiring facts concerning the operation of the statutes are demonstrated in other portions of the report.
109. The statute protecting telegraph lines and communications was extended to telephones in 1905. CAL. ANN. CODES, PENAL CODE § 640, *Historical Note* (West 1956).
110. CAL. ANN. CODES, PENAL CODE § 653(h) (West 1956).
111. 44 C.2d 434, 282 P.2d 905, 50 A.L.R.2d 513 (1955). For California developments after Cahan, see Note, *The Cahan Case: The Interpretation and Operation of the Exclusionary Rule in California*, 4 U.C.L.A.L. REV. 252 (1957).
112. The issue was raised in both *People v. Dement*, 48 A.C. 604, 311 P.2d 505 (1957), and *People v. Lawrence*, 149 A.C.A. 501, 308 P.2d 821 (1957), but the court avoided it by holding that the conduct complained of did not come within § 640.
113. CAL. ANN. CODES § 640 (West 1956). Many states have similar provisions. These sections raise serious problems concerning the multiplication of offenses which remain unresolved.
114. *Ibid.*
115. 28 C.2d 657, 171 P.2d 1 (1946).
116. Professor Westin, who has made many valuable suggestions regarding the legal section of this report, has made available a story in the Los Angeles Times of August 17, 1955, which reported a prosecution of a husband, his lawyer, and a private detective for wiretapping.
117. 107 Cal. App. 2d 192, 236 P.2d 654 (1951).
118. 44 C.2d 434, 282 P.2d 905, 50 A.L.R.2d 513 (1955).
119. *People v. Mayen*, 188 Cal. 237, 205 P. 435 (1922).
120. 46 C.2d 59, 292 P.2d 517 (1956).
121. Cited at note 118 *supra*.
122. See quotation at note 102 *supra*.
123. *People v. Kelly*, 22 C. 169, 137 P.2d 1 (1943); *People v. Barnhart*, 66 Cal. App. 2d 714, 153 P.2d 214 (1944); *People v. Onofrio*, 65 Cal. App. 2d 193, 151 P.2d 158 (1944). See also *People v. Vertleib*, 22 C.2d 193, 137 P.2d 437 (1943), admitting the evidence although the police officer had lied concerning his identity during the phone calls in question.
124. *Goldstein v. United States*, 316 U.S. 114 (1942).

125. *People v. Kelly*, cited at note 123 *supra*.
126. Cited at note 111 *supra*.
127. Note, *The Cahan Case: The Interpretation and Operation of the Exclusionary Rule in California*, 4 U.C.L.A.L. REV. 252 (1957).
128. Cited note 123 *supra*.
129. See, for example, the following: ARIZ. CODE ANN. § 43-5402 (1939); IDAHO CODE § 18-6705 (Bobbs-Merrill 1948); N.D. REV. CODE § 8-1007 (1943).
130. REPORT OF THE NEW YORK JOINT LEGISLATIVE COMMITTEE TO STUDY ILLEGAL INTERCEPTION OF COMMUNICATIONS, cited note 96 *supra*, at 1348, 1351.
131. *Id.* at 1352. The report lists a conviction some thirty years before, three abortive prosecutions in 1949, and the Broady case as the only prosecutions under the statute.
132. *People v. Hebbard*, 96 Misc. 617, 35 N.Y. Crim. 165, 162 N.Y.S. 80 (1916).
133. Although Mr. Dewey was not a delegate, the speech was reproduced for the record. New York State Constitutional Convention (rev. record) 368 (1938).
134. *Id.* at 336.
135. N.Y. CONST. art I, § 12 (1938).
136. Letter, Assistant Counsel to Governor Lehman, Governor's Bill Jacket to § 813a, CODE OF CRIM. PROC.
137. Letter, Mayor La Guardia to Governor Lehman, Governor's Bill Jacket to § 813a, CODE OF CRIM. PROC.
138. Letter, Citizens Union of the City of New York to Governor Lehman, Governor's Bill Jacket to § 813a, CODE OF CRIM. PROC.
139. Letter, Counsel to Governor Lehman, Governor's Bill Jacket to § 813a, CODE OF CRIM. PROC.
140. N.Y. CONSOL. LAWS ANN., CODE OF CRIM. PROC. § 813a (McKinney 1944).
141. 344 U.S. 199 (1952).
142. *Harlem Check Cashing Corp. v. Bell*, 296 N.Y. 15, 68 N.E.2d 854 (1946); *People v. Stemmer*, 298 N.Y. 728, 83 N.E.2d 141 (1948), *aff'd by equally divided court*, 336 U.S. 963 (1949); *Tela-News Flash v. D.A. of Queens County*, 197 Misc. 1015, 96 N.Y.S.2d 338 (1950), *aff'd without opinion*, 277 App. Div. 119, 101 N.Y.S.2d 245 (1950).
143. Cited note 141 *supra*.
144. *Katz v. People*, 201 Misc. 414, 114 N.Y.S.2d 360 (1952).
145. *People v. Appelbaum*, 277 App. Div. 43, 97 N.Y.S.2d 807 (1950); *aff'd without opinion*, 301 N.Y. 738, 95 N.E.2d 410 (1950).
146. N.Y. CONSOL. LAWS ANN., PENAL CODE § 552a (McKinney 1944).

147. *Application for an Order Permitting the Interception of Tel. Comm. of Anonymous*, 207 Misc. 69, 136 N.Y.S.2d 612 (1955).
148. Justice Oliver is quoted to this effect in Harris, *Is Wiretapping Legal?*, 121 NEW REPUBLIC 11 (1949). The article is reproduced in 95 CONG. REC. A 4989-90 (1949).
149. REPORT OF THE NEW YORK JOINT LEGISLATIVE COMMITTEE TO STUDY ILLEGAL INTERCEPTION OF COMMUNICATIONS, cited note 96 *supra*, at 1349.
150. N.Y. Sess. Laws 1957 ch. 879, § 1 (McKinney). The amendments to the wiretapping and eavesdropping laws are in chs. 879-881. For comments upon the statute, see Note, *The 1957 New York Legislation on Wire-tapping Problems*, 26 FORDHAM L. REV. 540 (1957); Note, *Eavesdropping Legislation in New York: Article 84 of the Penal Law and Section 345-A of the Civil Practice Act*, 9 SYRACUSE L. REV. 282 (1958).
151. N.Y. Sess. Laws 1957 ch. 881, § 1 (McKinney).
152. ILL. REV. STAT. ch. 134, § 15(a) (Burdette Smith 1953).
153. *People v. Castru*, 311 Ill. 392, 143 N.E. 112 (1924); *People v. Albea*, 2 Ill. 2d 317, 118 N.E.2d 277 (1954).
154. ILL. REV. STAT. OF 1957 ch. 38, § 206.1-5 (Burdette Smith 1957).
155. Note, *Recent State Wiretap Statutes: Deficiencies of the Federal Communications Act Corrected*, 67 YALE L.J. 932, 936 (1958).
156. *Id.* at 398.
157. LA. REV. STAT. ANN. tit. 14, § 322 (West 1950).
158. For a report of the case in the federal courts, see *Massicot v. United States*, 254 F.2d 58 (5th Cir. 1958).
159. MASS. ANN. LAWS ch. 272, § 99 (Michie 1956).
160. *Comm. v. Publicover*, 327 Mass. 303, 98 N.E.2d 633 (1951). See also *Opinion of the Justices*, 336 Mass. 765, 142 N.E.2d 770 (1957), wherein the Justices stated that a court order system would not constitute a delegation of a non-judicial function to the court.
161. § 144 (1954). Vetoed by Governor Herter on June 9, 1956. In his veto message, Governor Herter stated that requiring a court order "would be to place an unreasonable restraining hand on criminal investigation."
162. NEV. STAT., ch. 242 (1957).
163. N.J. STAT. ANN. § 2A:146-1 (1952).
164. *Morss v. Forbes*, 24 N.J. 341, 132 A.2d 1 (1957).
165. Rosenzweig, *The Law of Wiretapping*, 33 CORNELL L.Q. 73, 74 (1947).
166. The opinion of Judge Leonard is set forth in the record of the hearings of the N.J. Joint Legislative Committee to Study Wiretapping and the Unauthorized Recording of Speech.

167. *State v. Vanderhave*, 47 N.J. Super. 483, 136 A.2d 296 (App. Div. 1957). *Aff'd*, *State v. Giardina*, 27 N.J. 313, 142 A.2d 609 (1958).
168. *Eleuteri v. Richman*, 26 N.J. 506, 141 A.2d 46 (1958). For a collection of the New Jersey authorities and a virtual brief for the exclusionary rule, see the Superior Court's opinion in the same case. 47 N.J. Super. 1, 135 A.2d 191 (App. Div. 1957).
169. PA. STAT. ANN. tit. 18, § 4688 (Purdon's 1945).
170. *Comm. v. Chait*, 380 Pa. 532, 112 A.2d 379 (1955).
171. 344 U.S. 199 (1952).
172. 112 A.2d at 383.
173. 355 U.S. 96 (1957).
174. Acts of 1957, No. 411. For comment upon the state, see Note, *Recent State Wiretap Statutes*, 67 YALE L.J. 932 (1958).
175. The statute requires an "interception" and, as pointed out in the text while discussing *Rathbun v. United States*, 355 U.S. 107 (1957), that word has been relied upon in federal cases allowing recording or overhearing with the consent of one of the parties. Probably a person cannot "intercept" his own calls, even if he may not allow a third person to listen in or record. However, if "intercepts" serves to distinguish between cases where a third person overhears and records with the consent of one of the parties, it must do so upon a basis of geography or mechanics which appear to have no significance for the real problem.
176. *Comm. v. Smith*, 186 Pa. Super. 89, 140 A.2d 347 (1958).
177. 247 F.2d 860 (2d Cir. 1957).
178. ILL. REV. STAT. ch. 38, § 206.3 (Burdette Smith 1957). The liability, of course, extends to the tapper, his principal, and "any landlord, owner or building operator, or common carrier by wire" who aids or abets the eavesdropping. The statute also allows recovery against the landlord, owner, building operator, and common carrier if the eavesdropping is knowingly allowed. This appears to be a greater extension of liability.
179. This would appear to be admissible, if relevant, under the admissions exception to the hearsay rule. See generally McCORMICK, EVIDENCE 502 *et seq.* (1954); UNIFORM RULES OF EVIDENCE 63 (7) (1953).
180. As to the effect of eavesdroppers to confidential communication, see McCORMICK, EVIDENCE 162 (1954). See also McCORMICK, EVIDENCE 174 (1954), wherein it is said that the confidential nature of a communication to a spouse will not be destroyed if it is heard by a third person in connivance with the spouse to whom the declaration is made.
181. See, for example, *Mesarosh v. United States*, 352 U.S. 1 (1956).

182. *Sorrells v. United States*, 287 U.S. 435 (1932). This raises a problem as to the meaning of the phrase "criminal design originates with the officials." Assume that *D*, a person dealing in illegal liquor as a business, sells to a revenue agent at the agent's request. Contrast with the situation in *Sorrells*, wherein the defendant was not shown to have dealt in illegal liquor prior to his sale to the agent at the agent's urging. In both cases the sale to the agent was instigated by the agent, but in the first the intent to sell the liquor to somebody existed in *D*'s mind prior to the agent's solicitation, while in the second case the defendant had no prior intent on this regard. Presumably, entrapment would be present only in the second case. See *Sherman v. United States*, 356 U.S. 369 (1958); *Masciale v. United States*, 356 U.S. 386 (1958).
183. This would appear to be the basis of Chief Justice Hughes's presumed legislative intent in the case of *Sorrells v. United States*, 287 U.S. 435 (1932). Warren, C. J.: "The function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestly, that function does not include the manufacturing of crime." *Sherman v. United States*, 356 U.S. 369 (1958).
184. *Roberts, J.* (concurring), 287 U.S. at 457.
185. 4 COMMENTARIES ch. 13, § 5 (6); 2 BISHOP, CRIMINAL LAW 274; WHARTON, CRIMINAL LAW § 1718 (12th ed. 1932).
186. *Comm. v. Lovett*, 4 Clark (Pa.) 5 (1831); *State v. Williams*, 2 Overt. (Tenn.) 108 (1808); *State v. Pennington*, 3 Head (Tenn.) 299 (1859).
187. *State v. Williams*, cited note 186 *supra*; *State v. Pennington*, *supra* note 177.
188. *Comm. v. Lovett*, cited note 186 *supra*.
189. *State v. Davis*, 139 N.C. 547, 51 S.E. 897 (1905).
190. "This section is obviously an inept 19th Century attempt to modernize Blackstone. Lawyers recognize that this seemingly simple sentence contains so many elements of proof that it would be impossible to convict anyone under it. It has been a dead letter of the law, though we still recognize the principle as sound." REPORT OF THE NEW YORK JOINT LEGISLATIVE COMMITTEE TO STUDY ILLEGAL INTERCEPTION OF COMMUNICATIONS, cited note 96 *supra*.
191. *Id.* at 1373-4.
192. REPORT OF THE CALIFORNIA SENATE JUDICIARY COMMITTEE ON THE INTERCEPTION OF MESSAGES BY THE USE OF ELECTRONIC AND OTHER DEVICES 21 (1957).
193. *McNabb v. United States*, 318 U.S. 332 (1943).
194. 350 U.S. 214 (1956).
195. 277 U.S. 438 (1928).

196. 316 U.S. 129 (1942).
197. *Id.* at 135.
198. 343 U.S. 747 (1952).
199. Jackson, J.: "But the rationale of the McGuire case rejects such fine-spun doctrines for exclusion of evidence." 343 U.S. at 752. The reference is to *McGuire v. United States*, 273 U.S. 95 (1927).
200. *Lott v. United States*, 230 F.2d 915 (5th Cir. 1956); *United States v. Sansone*, 231 F.2d 887 (2d Cir. 1956); *United States v. Klosterman*, 147 F. Supp. 843 (E.D. Pa. 1957). See also *Monroe v. United States*, 234 F.2d 49 (D.C. Cir. 1956).
201. 347 U.S. 128 (1954).
202. Jackson, J.: "That officers of the law will break and enter a home, secrete such a device, even in a bedroom, and listen to the conversation of the occupants for over a month would be almost incredible if it were not admitted. Few police measures have come to our attention that more flagrantly, deliberately, and persistently violated the fundamental principle declared by the Fourth Amendment. . . ." 347 U.S. at 132.
203. 338 U.S. 25 (1949).
204. REPORT OF THE NEW YORK JOINT LEGISLATIVE COMMITTEE TO STUDY ILLEGAL INTERCEPTION OF COMMUNICATIONS, cited note 96 *supra*.
205. For other state statutes, see CAL. ANN. CODES, PENAL CODE § 653(h) (West 1956); GEORGIA CODE ANN. § 26-2001 (Harrison 1953); MASS. ANN. LAWS ch. 272, §§ 99-102 (Michie 1956); NEV. STAT. ch. 242, § 5 (1957); N.D. REV. CODE § 12-4205 (1943); S.C. CODE § 16-554 (Michie 1952); S.D. CODE § 13-1425 (1939). See also TENN. CODE ANN. § 39-1212 (Bobbs-Merrill 1955).
206. States recognizing common-law crimes may still recognize eavesdropping. For example, a man was held for the Grand Jury on such a charge in New Jersey in 1957. *Philadelphia Inquirer* (N.J. ed.), Sept. 2, 1957, p. 11.
207. CAL. ANN. CODES, PENAL CODE § 653(h) (West 1956).
208. For a discussion of the problems under the California statute, see REPORT OF THE CALIFORNIA SENATE JUDICIARY COMMITTEE ON THE INTERCEPTION OF MESSAGES BY THE USE OF ELECTRONIC AND OTHER DEVICES 17-19 (1957).
209. 44 C.2d 434, 282 P.2d 905, 50 A.L.R.2d 513 (1956).
210. 347 U.S. 128 (1954).
211. Traynor, J.: "Meanwhile, pursuant to the suggestion of the United States Supreme Court, we have reconsidered the rule we have heretofore followed. . . ." 282 P.2d at 909.
212. See *People v. Tarantino*, 45 C.2d 590, 290 P.2d 505 (1955).
213. N.D. REV. CODE § 12-4205 (1943).

- 214. MASS. ANN. LAWS ch. 272, § 99 (Michie 1956).
- 215. *Id.* at § 101.
- 216. *Id.* at § 99.
- 217. The question is the meaning of "use," since the prohibitory section covers only a limited use. Therefore, the term could be interpreted as meaning only non-criminal uses.
- 218. Mass. Acts 1956 ch. 48, § 1.
- 219. Cal. Acts 1957 ch. 1879, p. 2764.
- 220. REPORT OF THE CALIFORNIA SENATE JUDICIARY COMMITTEE ON THE INTERCEPTION OF MESSAGES BY THE USE OF ELECTRONIC AND OTHER DEVICES 21 (1957).
- 221. Cal. Sen. Bill No. 927 (1957).
- 222. Cal. Sen. Bill No. 239 (1957).
- 223. NEV. STAT. ch. 242 §§ 5, 7 (1957). (An act to amend ch. 200 of NEV. REV. STAT.)
- 224. N.Y. Sess. Laws 1957, ch. 881, § 1. (An act to add article 73 to the Penal Code.)
- 225. N.Y. Sess. Laws 1958, chs. 675, 676 (McKinney).
- 226. See Governor Harriman's Memorandum, N.Y. Sess. Laws 1958, 1837 (McKinney).
- 227. Cited note 223 *supra*.
- 228. Cf. MASS. ANN. LAWS ch. 272, § 99 (Michie 1956). Whether or not police officers come within the "dictograph" clause of this section depends upon whether the clause "with intent to procure information concerning any official matter or to injure another" limits both wiretapping and eavesdropping. If it does, police officers would not appear to be included unless getting evidence concerning the commission of a crime is "to injure" the guilty person.
- 229. ILL. REV. STAT. ch. 38, § 206. 1-5 (Burdette Smith, 1957).
- 230. *Schwartz v. United States*, 344 U.S. 199 (1952).
- 231. Note, *Admissibility in the Federal Courts of Evidence Obtained by Eavesdropping Through the Use of Communication Devices*, 7 WYO. L.J. 89 (1953). See also Hirt, J., in *Hunter v. Hunter*, 169 Pa. Super., 498, 83 A.2d 401, 403 (1953).
- 232. For a classification of the situations in which recordings are used in evidence, see Conrad, *Magnetic Recordings in Court*, 40 VA. L. REV. 23, 26 (1954).
- 233. *Ibid.* Annot., 168 A.L.R. 927 (1947); *Wright v. State*, 38 Ala. App. 64 (1954); *State v. Triplett*, 79 N.W.2d 391 (Iowa 1956).
- 234. For a discussion of the problems of authentication, see Conrad, *supra* note 232, at 34-36.
- 235. *People v. King*, 101 Cal. App. 2d 500, 225 P.2d 950 (1951).
- 236. *McGuire v. State*, 200 Md. 601, 92 A.2d 582 (1952).

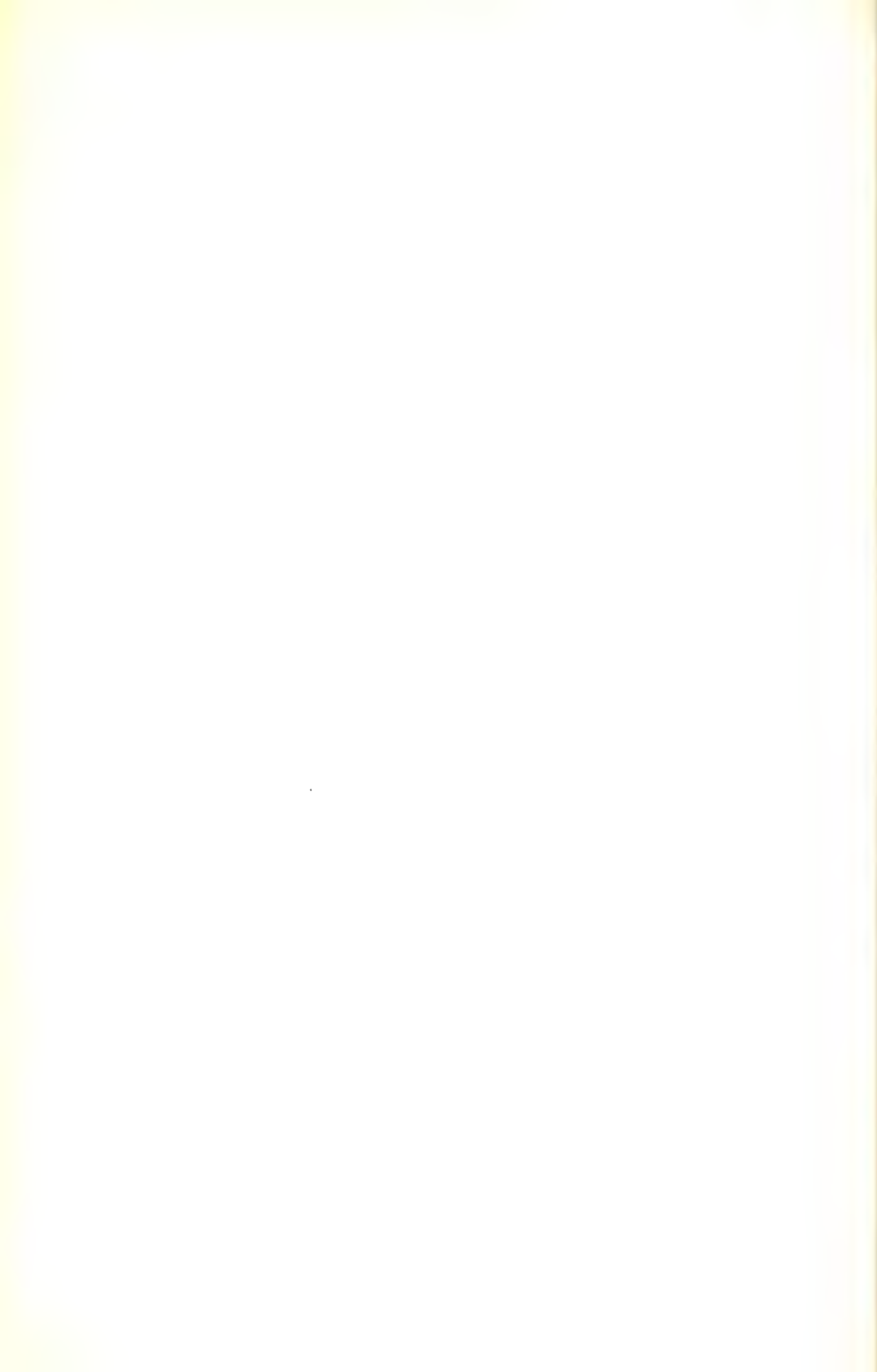
237. See generally, Conrad, *supra* note 232, at 30-31. United States v. Monroe, 234 F.2d 49 (D.C. Cir. 1956).
238. Sen. Bill No. 6, 67th Gen. Assembly.
239. Schwartz, *On Current Proposals to Legalize Wiretapping*, 103 U. PA. L. REV. 157, 166 (1954).
240. 343 U.S. 747 (1952).
241. United States v. On Lee, 201 F.2d 722 (2d Cir. 1953).
242. See Conrad, *supra* note 232, at 35-36. The procedure to be followed is set forth in Wright v. State, 38 Ala. App. 64, 79 So.2d 66, 73 (1954).
243. United States v. Monroe, 234 F.2d 49 (D.C. Cir. 1956).
244. See Conrad, *supra* note 232, at 34.
245. *Ibid.* at 31-32; Wright v. State, 38 Ala. App. 64, 79 So.2d 66 (1954).
246. Hirt, J.: "But since parts of what was said by the defendant, on all of the occasions are lacking, the recordings on that ground alone, are not admissible against her. In general such conversations are admissible as a whole or not at all." Hunter v. Hunter, 169 Pa. Super. 498, 83 A.2d 401, 403 (1951).
247. People v. Feld, 305 N.Y. 322, 113 N.E.2d 440 (1953).
248. Conrad, *supra* note 232, at 36.
249. People v. Feld, cited at note 247 *supra*.
250. United States v. Monroe, 234 F.2d 49 (D.C. Cir. 1956).
251. Conrad, *supra* note 232, at 36. State v. Triplett, 79 N.W.2d 391 (Iowa, 1956).
252. See Irvine v. California, 347 U.S. 128 (1954), and comments thereon in the text, *supra*.
253. People v. Martin, 45 C.2d 755, 290 P.2d 855 (1955); People v. Andrews, Cal. App. 2d, 314 P.2d 177 (1957); Crowell v. State, 147 Tex. Crim. 299, 180 S.W.2d 343 (1944).
254. See concurring opinion of Justice Jackson in McDonald v. United States, 335 U.S. 451 (1958).
255. People v. Ruiz, 146 Cal. App. 2d 630, 304 P.2d 175 (1956). However, it would constitute a "flagrant violation" of the defendant's constitutional rights if the police had drilled the hole. Shinn, J., in 304 P.2d at 177. Cf. Cohn v. State, 120 Tenn. 61, 109 S.W. 1149 (1908).
256. United States v. Lee, 274 U.S. 559 (1927).
257. Haerr v. United States, 240 F.2d 533 (5th Cir. 1957); Childers v. Comm., Ky., 286 S.W.2d 369 (1955). These cases involved shining a flashlight into a car. Cf. State v. Hawkins, 362 Mo. 152, 240 S.W.2d 688 (1951), wherein the claimed illegal search was also the looking through a car window.
258. Hodges v. United States, 243 F.2d 281 (5th Cir. 1957).

259. As to the meaning of curtilage, see *Temperani v. United States*, 299 Fed. 365 (9th Cir. 1924); *Wakkuri v. United States*, 67 F.2d 844 (6th Cir. 1933); *Roberson v. United States*, 165 F.2d 752 (6th Cir. 1948); *Hodges v. United States*, 243 F.2d 281 (5th Cir. 1957); *Crowell v. State*, 147 Tex. Crim. 299, 180 S.W.2d 343 (1944); *Harris v. State*, 203 Md. 165, 99 A.2d 725 (1953).
260. In *Cohn v. State*, 120 Tenn. 61, 109 S.W. 1149 (1908), the officers removed bricks and mortar to observe the defendants in a saloon. As to the extension of protection to places of business, see *Frank, J.*, dissenting in *On Lee v. United States*, 193 F.2d 306, 315, n. 18 (2d Cir. 1951).
261. *Hartigan, J.*: "We find no basis in the cases or logic for distinguishing between the introduction into evidence of physical objects illegally taken and the introduction of testimony concerning objects illegally observed. We are aware of no case which makes this distinction. Moreover, it seems to us that the protection afforded by the Constitution against unreasonable search and seizure would be narrowed down to a virtual nullity by any such view of the law. . . ." *McGinnis v. United States*, 227 F.2d 598, 603 (1st Cir. 1955). See cases collected in 50 A.L.R.2d 513, 567 (1956); *Saunders v. Oklahoma*, Okla. Crim. 287 P.2d 458 (1955).
262. *Prettyman, J.*: "Distinction between 'inspection' and 'search' of a home has no basis in semantics, in constitutional history, or in reason. 'Inspects' means to look at, and 'search' means to look for. To say that the people, in requiring adoption of the Fourth Amendment, meant to restrict invasion of their homes if government officials were looking for something, but not restrict it if the officials were merely looking, is to ascribe to the electorate of that day and to the several legislatures and the Congress a degree of irrationality not otherwise observable in their dealing with potential tyranny." Cf. *Thompson, J.*, in *People v. Exum*, 382 Ill. 204, 47 N.E.2d 56, 59 (1943).
263. *Sobeloff, C. J.*: "How can it be appropriate to speak of an invasion of privacy of a person who stands in her doorway, flaunting evidences of crime in a place exposed to the sight of a number of neighbors and their families and visitors, including tradespeople who have an implicit invitation to come and go without hindrance?" 99 A.2d at 728. The officer was standing in a private alleyway used by tenants for access to their rooms.
264. See cases cited notes 253-258 *supra*.
265. See *Hartigan, J.*, quoted note 261 *supra*.
266. 3 WIGMORE, EVIDENCE § 791 (3d ed. 1940).

267. *United States v. Dixon*, 117 F. Supp. 925 (N.D. Cal. 1949); *Story v. State*, 97 Okla. Crim. 116, 258 P.2d 706 (1953). See also *People v. Berger*, 44 C.2d 459, 282 P.2d 509 (1955), requiring suppression of photostats of papers which were illegally seized, photostated, and returned to the defendant prior to trial.
268. ALA. CODE tit. 14, § 436 (2) (1955 Cum. Supp.). This section was enacted in 1951 after a prior statute was declared unconstitutional for vagueness in *Kahally v. State*, 254 Ala. 482, 48 So.2d 794 (1950). CAL. PENAL CODE § 647 (12) (West 1955). This subsection was enacted in the amendment of 1947. LA. REV. STATS. tit. 14, § 284, enacted in 1950 (West 1950); N.J. STAT. ANN. § 2A:170-31.1, enacted in 1956.
269. See *Grand Rapids v. Williams*, 112 Mich. 247, 70 N.W. 547 (1897), wherein it was held that "pecking in the window of a house" violated an ordinance against "indecent, insulting, or immoral conduct." The incident took place at night and the window was in a dwelling and several people, including women, were in the room into which the defendant pecked. Cf. *Phillips v. Aberdeen*, 188 Miss. 620, 196 So. 632 (1940); *DeBoard v. State*, 160 Tenn. 51, 22 S.W.2d 235 (1929).
270. CAL. ANN. CODES, PENAL CODE § 647 (West 1955); GA. CODE ANN. tit. 26, § 2002 (1935); IND. STAT. ANN. § 10-4910 (Burns 1955); LA. REV. STAT. tit. 14, § 284 (West 1950); N.J. STAT. ANN. § 2A:170-31.1 (1957 Supp.); ORE. REV. STAT. § 167, 165 (1) (1953); R.I. GEN. LAWS § 11-45-1 (Bobbs-Merrill 1956); S.C. CODE tit. 16, § 554 (1952); TENN. CODE ANN. § 39-1212 (Bobbs-Merrill 1955); VA. CODE tit. 18, § 225.1 (1956 Cum. Supp.).
271. ALA. CODE tit. 14, § 436 (2) (1955 Supp.); N.C. GEN. STAT. § 14-202 (1953).
272. Alabama, California, Indiana, New Jersey, Oregon, Virginia. See citations at notes 270, 271 *supra*.
273. TENN. CODE ANN. § 39-1212 (Bobbs-Merrill 1955).
274. Georgia, Louisiana, South Carolina. See citations at note 270 *supra*.
275. California, New Jersey, Oregon, Virginia. See citations at note 270 *supra*.
276. Alabama, Georgia, Indiana, North Carolina, Rhode Island, South Carolina, Tennessee. See citations at notes 270, 271 *supra*.
277. Cited at note 270 *supra*.
278. ORE. REV. STAT. § 167.165 (1) (1953).
279. 1 N.C.L. REV. 286 (1923).

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